FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 07–91; FCC 07–70]

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document begins the Commission's third periodic review of the transition of the nation's broadcast television system from analog to digital television. It provides a progress report on the DTV transition and considers the procedures and rule changes necessary to ensure that broadcasters timely complete their transitions. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals. This document considers how to ensure that broadcasters complete construction of their final, post-transition (digital) facilities by the statutory deadline.

DATES: Comments are due on or before August 8, 2007; reply comments are due on or before August 23, 2007.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–91, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number.
- *E-mail: ecfs@fcc.gov.* To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Mail:* Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.
- *Hand Delivery/Courier:* Filings can be sent by hand or messenger delivery. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *Accessibility Information:* Contact the FCC to request information in accessible formats (computer diskettes, large print, audio recording, and Braille) by sending an e-mail to *fcc504@fcc.gov* or calling the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

Instructions: All submissions received must include the agency name and docket number for this rulemaking. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov of the Media Bureau, Policy Division, (202) 418–2120 or Eloise Gore, *Eloise.Gore@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120; Gordon Godfrey, *Gordon.Godfrey@fcc.gov*, of the Media Bureau, Engineering Division, (202) 418–7000; Nazifa Sawez, *Nazifa.Sawez@fcc.gov*, of the Media Bureau, Video Division, (202) 418–1600; or Alan Stillwell, *Alan.Stillwell@fcc.gov*, of the Office of Engineering and Technology, (202) 418–2470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 07–70, adopted on April 25, 2007, and released on May 18, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), and contains proposed new and modified information collection requirements, including the following proposals: (1) Applications detailing stations' plans for completing their transitions; (2) Applications to construct or modify post-transition facilities (using FCC Forms 301 and 340); (3) Requests to reduce analog TV service; (4) Requests to terminate analog TV service; (5) Requests to flash cut; (6) Requests for STA to use analog translators to offset

loss of analog service; (7) Requests for extension of time to construct (using FCC Form 337), or to toll the construction deadline for, DTV facilities; (8) Requests to transition early to their post-transition channel; (9) Requests for STA to temporarily remain on their in-core pre-transition DTV channel; (10) Requests for STA to build less than full, authorized post-transition facilities by the deadline; (11) Applications for a license to cover post-transition facilities (using FCC Form 302 DTV); and (12) PSIP requirement to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the proposed information collection requirements contained in this document, as required by the PRA.

Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before September 7, 2007. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov*; and also to Jasmeet Seehra, OMB, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via Internet to *Jasmeet_K._Seehra@omb.eop.gov*, or via fax at 202–395–5167. If you would like to obtain a coy of this information collection, you may do so by visiting the FCC's PRA webpage at *http://www.fcc.gov/omd/pra.*

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

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,278.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time Per Response: 2 to 4 hours.

Total Annual Burden: 10,513 hours.

Total Annual Costs: $51,350,347.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking (NPRM), In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70. The NPRM proposes that commercial television stations must use the proposed revised FCC Form 301 when applying for post-transition facilities, when requesting to reduce analog TV service and when requesting to transition early to their post-transition channel. FCC Form 301 is being revised to accommodate the filing of post-transition applications.

FCC Form 301 is used to apply for authority to construct a new commercial AM, FM, or TV broadcast station, to make changes in existing facilities of such a station, and may be used to request a change of a station's community of license by AM and non-reserved band FM permittees and licensees. In addition, FM licensees or permittees may request, by filing an application on FCC Form 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels.

OMB Control Number: 3060–0029.

Title: Application for TV Broadcast Station License, FCC Form 302 TV; Application for DTV Broadcast Station License, FCC Form 302–DTV, Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number(s): FCC Form 302 TV; FCC Form 302–DTV; FCC Form 340; FCC Form 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 4,325.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Estimated Time per Response: 2 to 4 hours.

Total Annual Burden: 12,150 hours.

Total Annual Costs: $21,091,625.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking (NPRM), In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70, to consider the procedures and rule changes necessary to complete the nation's transition to DTV, including how best to ensure that broadcasters complete construction of their facilities on their final, post-transition (digital) channel by the statutory deadline.

The NPRM proposes that Noncommercial Education (NCE) television stations must use the proposed revised FCC Form 340 when applying for authority to construct or modify post-transition facilities; when requesting to reduce analog TV service and when requesting to transition early to their post-transition channel. Therefore, FCC Form 340 is being revised to accommodate the filing of applications to construct or modify post-transition facilities.

The NPRM also proposes that stations that have applied to construct or modify post-transition facilities must use the Form 302—DTV to obtain a new or modified station license to cover those post-transition facilities.

In addition, the Commission is consolidating information collection OMB Control Number 3060–0837

(Application for DTV Broadcast Station License, FCC 302–DTV) into this collection OMB Control Number 3060–0029.

FCC Forms 302–TV, 302–DTV and 349 remain unchanged.

OMB Control Number: 3060–0407.

Title: Application for Extension of Time to Construct a Digital Television Broadcast Station, FCC Form 337; Section 73.3598, Period of Construction.

Form Number: FCC Form 337.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 160.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Estimated Time Per Response: 0.25 to 3 hours.

Total Annual Burden: 263 hours.

Total Annual Costs: $37,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking in the matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70, to consider the procedures and rule changes necessary to complete the nation's transition to DTV, including how best to ensure that broadcasters complete construction of their facilities on their final, post-transition (digital) channel by the statutory deadline.

The NPRM proposes that stations requesting an extension of time to construct DTV facilities with construction deadlines occurring prior to February 17, 2009, the station must use the Form 337 in accordance with 47 CFR 73.624(d)(3). The NPRM proposes to revise Form 337 to accommodate these filings. Also, for stations with construction deadlines occurring on February 17, 2009 and later, the station must make a letter filing in accordance with 47 CFR 73.3598.

In addition, the Commission is consolidating information collection OMB Control Number 3060–1001 (Application for Extension of Time to Construct a Digital Television Broadcast Station, FCC Form 337) into this collection OMB Control Number 3060–0407 (Section 73.3598, Period of Construction).

OMB Control Number: 3060–0386.

Title: Section 73.1635, Special Temporary Authorizations (STAs).

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,350.

Frequency of Response: On occasion reporting requirement.

Estimated Time Per Response: 1 to 4 hours.

Total Annual Burden: 2,800 hours.

Total Annual Costs: $1,403,150.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70, to consider the procedures and rule changes necessary to complete the nation's transition to DTV, including how best to ensure that broadcasters complete construction of their facilities on their final, post-transition (digital) channel by the statutory deadline.

For purposes of the DTV transition, the NPRM proposes that stations may file requests for Special Temporary Authorities (STAs) to use analog translators to offset the loss of analog service when seeking to reduce or terminate analog service prior to the transition deadline (i.e., February 17, 2009); to temporarily remain on their in-core pre-transition DTV channel after the DTV transition deadline (i.e., February 17, 2009), and to build less than full, authorized post-transition facilities by the transition deadline (i.e., February 17, 2009).

OMB Control Number: 3060–0216.

Title: Informal Requests to Discontinue Only One Service and Informal Requests to Flash Cut; Section 73.3538, Application To Make Changes in an Existing Station, Section 73.1690(e) Modification of Transmission Systems.

Form Number: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 700.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Estimated Time Per Response: 0.50—3 hours.

Total Annual Burden: 1,125 hours

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70, to consider the procedures and rule changes necessary to complete the nation's transition to DTV, including how best to ensure that broadcasters complete construction of their facilities on their final, post-transition (digital) channel by the statutory deadline.

The NPRM proposes to allow stations to request Commission approval to discontinue analog TV service prior to the end of the DTV transition. To obtain such approval from the Commission, the NPRM proposes to allow stations to make such requests by sending a letter to the Video Division of the Media Bureau and sending an e-mail to *analog@fcc.gov* in lieu of filing an application for construction permit (e.g., Form 301 or Form 340).

The NPRM also considers whether to allow stations to request Commission approval to return their currently assigned, pre-transition-only DTV channel (i.e., a DTV channel that is not their final, post-transition channel) and flash cut at or before the transition deadline from their current analog channel to their final, post-transition channel.

Section 73.1690(e) of the Commission's rules requires AM, FM and TV station licensees to prepare an informal statement or diagram describing any electrical and mechanical modification to authorized transmitting equipment that can be made without prior Commission approval provided that equipment performance measurements are made to ensure compliance with FCC rules. This informal statement or diagram must be retained at the transmitter site as long as the equipment is in use. This requirement is approved in OMB Control Number 3060–0374, but is being consolidated into this collection (3060–0216).

Section 73.3538 requires broadcast stations to file an informal application to modify or discontinue the obstruction marking or lighting of an antenna supporting structure. The NPRM does

not affect this requirement. It has already been approved by OMB.

OMB Control Number: 3060-XXXX.

Title: Digital TV Transition Status Report.

Form Number: FCC Form 387.

Type of Review: New Collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,812.

Frequency of Response: One-time reporting requirement.

Estimated Time per Response: 2 hours.

Total Annual Burden: 3,624 hours.

Total Annual Costs: $1,268,400.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70. This is a review of the transition of the nation's broadcast television system from analog to digital television. This NPRM, among other things, proposes to require all full-power television stations to file a form (FCC Form 387) with the Commission detailing their transition status on or before December 1, 2007.

OMB Control Number: 3060–XXXX.

Title: Section 73.682(d), TV Transmission Standards.

Form Number: Not applicable.

Type of Review: New Collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,812.

Frequency of Response: Weekly reporting requirement; Third party disclosure requirement.

Estimated Time Per Response: 0.50 hours.

Total Annual Burden: 47,112 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70. The NPRM proposes to update Section 73.682(d) of the Commission's rules, 47 CFR 73.682(d), to reflect revisions to the Advanced Television Systems Committee Inc's (ATSC) Program System Information Protocol (PSIP) standard. The revised ATSC PSIP standard requires broadcasters to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available. In other words, it requires broadcasters to provide detailed programming information when transmitting their broadcast signal. Currently, under version A/65–B, many broadcasters provide only general information in the EIT tables.

Summary of the NPRM of Proposed Rulemaking

I. Introduction

1. Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. With this *Notice of Proposed Rule Making (''NPRM''),* we begin our third periodic review of the transition of the nation's broadcast television system from analog to digital television (''DTV''). The Commission has conducted two prior periodic reviews: the first in MM Docket No. 00–39 and the second in MB Docket No. 03–15. We conduct these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. Here, we consider how to ensure that broadcasters complete construction of their final, post-transition (digital) facilities by the statutory deadline.

II. Executive Summary

2. In this Third DTV Periodic Review, we (1) provide a progress report on the transition; (2) describe the status and readiness of existing stations to complete the transition; (3) analyze and propose the procedures and rule changes necessary to complete the transition; and (4) address other issues related to the transition. Stations that have not completed construction of their post-transition channels must focus their full attention on the construction efforts necessary to move from analog to digital transmission no later than the February 17, 2009 deadline established by Congress. Specifically, we propose the following actions to facilitate the transition for full-power television stations (We note that the statutory transition deadline applies only to full-power stations; see 47 U.S.C. 309(j)(14) and 337(e). We will address the digital transition for low power television (''LPTV'') stations in a separate proceeding. The Commission previously determined that it has discretion under 47 U.S.C. 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease. Accordingly, the Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations):

- We tentatively conclude that February 17, 2009 will be the construction deadline for stations that are building digital facilities based on their new channel allotments in the new DTV Table of Allotments (''DTV Table'') and accompanying Appendix B (''new DTV Table Appendix B''), which will be established by an order in the Commission's DTV proceeding, MB Docket No. 87–268 (*i.e.*, stations whose DTV channel for pre-transition operation is not their channel for post-transition use). The Commission proposed channel assignments and reference facilities for stations' post-transition operations in a 2006 Notice of Proposed Rule Making in MB Docket No. 87–268. *See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service,* MB Docket No. 87–268, Seventh Further Notice of Proposed Rule Making, 71 FR 66592–01 (Nov. 15, 2006) (*''Seventh FNPRM''*). The *Seventh FNPRM* sets forth a channel for each eligible broadcast TV station in the proposed new DTV Table. The details of each station's channel assignment, including technical facilities and predicted service and interference information, are set forth in the proposed new DTV Table. [Section V.C.1. and proposed rule 47 CFR 73.624(d)(1)(v)]
- We propose that stations whose post-transition channel is the same as their pre-transition DTV channel, who are not facing unique technical challenges, and who are granted either an extension in the *Construction Deadline Extension Order* or a waiver in the Use-or-Lose Order must complete construction of their DTV facilities by the deadline established in those orders (*i.e.*, six months from the release date of the orders). These stations have had their post-transition channel assignments for several years. [Section V.C.2.]
- We propose that February 17, 2009 will be the construction deadline for stations facing unique technical

challenges, such as those with side-mounted digital antennas or similar situations in which the operation of their analog service prevents the completion of their full, authorized digital facilities. [Section V.C.3.]

• We tentatively conclude that stations that have not completed construction of full, authorized facilities on their pre-transition channel may be excused from completion of construction if this is not their post-transition channel. Our proposal applies to stations that have pending construction permits (''CPs''), that have requested CP extensions, that have been granted CP extensions, that have been granted waivers of the use-or-lose deadlines, and that have waivers for their checklist facility deadline. These stations will be permitted to carry-over protection to their full, authorized facilities. [Section V.C.1.]

• We propose to restrict the situations in which grants of an extension of time to construct digital facilities will be considered for construction deadlines prior to the end of the transition. In addition, beginning February 17, 2009, we propose to apply the existing ''tolling'' standard applied to analog stations to requests for additional time to construct digital facilities and will toll the construction deadline only in limited and unavoidable circumstances. [Section V.C.4. and proposed rule 47 CFR 73.624(d)(3)]

• We propose to require all full-power television stations to file a form with the Commission detailing their current transition status, additional steps necessary in order to be prepared for digital-only operation on February 17, 2009, and a timeline for making those steps. [Section V., paragraph 35]

• We consider whether and, if so, under what circumstances we should accept new requests by stations to return their pre-transition-only DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) before the end of the transition and ''flash cut'' from their analog channel to their post-transition channel. [Section V.B.]

• We examine the circumstances in which a station may be allowed to reduce or terminate its analog service to facilitate construction of its final, DTV facility on its post-transition channel. [Section V.A.]

• We propose to allow stations to operate on newly allotted post-transition facilities before the transition deadline provided they would not interfere with existing, pre-transition service. [Section V.C.5.]

• We request comment on additional proposals to provide stations with regulatory flexibility to facilitate stations' construction of their post-transition facilities by the statutory deadline. [Section V.C.6.]

• We propose to offer expedited processing to a station applying for a CP to build its post-transition channel, provided that its application (i) does not seek to expand the station's noise-limited service contour in any direction beyond that established by the new DTV Table Appendix B; (ii) specifies facilities that match or closely approximate those new DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that deviate no more than five percent from those new DTV Table Appendix B facilities with respect to predicted population); and (iii) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. We propose to revise FCC Forms 301 and 340 accordingly. [Section V.D.]

• We tentatively conclude that we will not accept applications to expand post-transition facilities until we have completed processing the applications to build authorized facilities, but we seek comment on ways to consider expansion applications sooner without delaying the transition. [Section V.E.]

• We tentatively conclude to adopt a new 0.5 percent interference standard to apply to maximizations and to new channel allotments after the transition. [Section V.F. and proposed rule 47 CFR 73.616]

• We propose to update the Commission's rules to reflect any revisions to the ATSC standards concerning DTV transmission and PSIP since the adoption of the *Second DTV Periodic Report and Order.* [Sections V.G.1. and V.G.2. and proposed rule 47 CFR 73.882(d)]

• We seek comment on whether the Commission can and should revise Section 73.624(g) to require DTV stations that are permittees operating pursuant to a DTV STA or other FCC authorization for DTV transmission to file FCC Form 317 and pay fees on any revenue derived from feeable ancillary or supplementary services in the same way required of DTV licensees. [Section V.G.3.]

• We invite comment on whether further amendments are needed to the station identification rules and, in particular, whether the current rules provide for appropriate identification of multicast channels. [Section V.G.4.]

• We invite comment on whether coordination is needed between broadcasters and MVPDs to ensure a smooth transition, whether this coordination is underway, and what actions the Commission should take to assist broadcasters with their coordination efforts. [Section V.G.6.]

III. Background

3. Congress specifically requires the Commission to evaluate the progress of the nation's transition to digital television. The first DTV periodic review began in March 2000 and the second in January 2003. In addition to these periodic reviews, the Commission has continued to conduct its DTV proceeding, through which it has developed new channel allotments and assignments. The Commission established the initial DTV Table of Allotments in 1997. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* MM Docket No. 87–268, Sixth Report and Order, 62 FR 26684–01 (May 14, 1997) (*''Sixth Report and Order''*). The details of each station's channel assignment under the initial DTV Table, including technical facilities and predicted service and interference information, were set forth in the initial Appendix B of the *Sixth Report and Order.* The initial Appendix B was amended in 1998. Simultaneous with the adoption of the *Sixth Report and Order,* the Commission announced DTV channel assignments for eligible licensees in the Fifth Report and Order, 62 FR 26966–02 (May 16, 1997), in the same docket. The Commission recently issued a *Seventh FNPRM* in connection with the DTV proceeding.

4. The *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MB Docket No. 03–15, Report and Order, 69 FR 59500 (October 4, 2004) (*''Second DTV Periodic Report and Order''*) established a three-round channel-election process through which eligible broadcast licensees and permittees (collectively, ''licensees'') selected their post-transition channels inside the core TV spectrum (*i.e.*, channels 2–51). The Commission received 11 petitions for reconsideration of the *Second DTV Periodic Report and Order,* raising a number of issues, most of which have been rendered moot by the completion of the channel election process . At the start of this process, licensees proposed their post-transition facilities. (In November 2004, licensees filed certifications via FCC Form 381 in order to define their proposed post-transition facilities. In these certifications, licensees chose whether to (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a

currently authorized smaller facility. Stations that did not submit certification forms by the deadline were evaluated based on replication facilities.) After each channel election round, the Commission announced proposed post-transition channels—called tentative channel designations (''TCDs'').

5. The channel election process culminated in the adoption of the *Seventh FNPRM,* which proposed a new DTV Table. (Comments on the proposed new DTV Table were due January 25th and replies were due February 26th.) The proposed new DTV Table provides eligible stations with channels for post-transition operations inside the core TV spectrum. The DTV Table is based on the TCDs announced for stations, as well as the Commission's efforts to promote overall spectrum efficiency and ensure that broadcasters provide the best possible service to the public, including service to local communities. The proposed DTV Table will ultimately replace the current DTV Table. (The *Seventh FNPRM* proposes to codify the new DTV Table in 47 CFR 73.622(i). The current DTV Table, which is contained in 47 CFR 73.622(b), will become obsolete at the end of all authorized interim DTV operations. The current NTSC Table, which is contained in 47 CFR 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease.)

6. In early 2006, Congress enacted significant statutory changes to the DTV transition in the Digital Television and Public Safety Act of 2005 (''DTV Act''). (The DTV Act is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, 120 Stat. 4 (2006) (''DRA''), and is codified at 47 U.S.C. 309(j)(14) and 337(e).) Most importantly, it set February 17, 2009, as the date certain for the end of the DTV transition, at which time all full-power television broadcast stations must cease their analog transmissions. (The DTV Act amends 47 U.S.C. 309(j)(14)(A) to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations and directs the Commission to ''take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, * * * all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).'') The DTV Act does not provide for waivers or extensions of this deadline for cessation of analog broadcasts. (Previously, 47 U.S.C. 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline if the Commission determined that less than 85 percent of the television households in a licensee's market were capable of receiving the signals of DTV broadcast stations through various means (*i.e.*, via over-the-air reception, cable or satellite, or digital-to-analog conversion technology). Congress eliminated the statutory provisions authorizing market-specific extensions of the DTV transition, including the 85 percent benchmark for DTV reception. This new hard deadline obviates the need for any further discussion of how to interpret and implement the former Section 309(j)(14)(B) of the Act, an issue previously deferred by the *Second DTV Periodic Report and Order.*) The DTV Act also requires broadcast licensees to cease operations outside the core spectrum after February 17, 2009 in order to make that spectrum available for public safety and commercial wireless uses. Full-power TV broadcast stations must be operating inside the core TV spectrum and only in digital upon the end of the transition on February 17, 2009. (The DTV Act also created a coupon program to subsidize the purchase of digital-to-analog (''D-to-A'') converter boxes.)

IV. Progress Report

7. The transition to DTV is a complex undertaking, affecting virtually every segment of the television industry and every American who watches television. The Commission has been facilitating the migration to DTV by adopting a standard for digital broadcasting, creating an initial DTV Table, awarding DTV licenses, establishing operating rules for the new service, monitoring the physical build-out of DTV broadcast stations, and helping to educate consumers about the transition. At the end of the transition, television broadcast operations will be limited to the core TV spectrum, enabling the recovery of a total of 108 MHz of spectrum (*i.e.*, TV channels 52–69). (The core TV spectrum is comprised of low-VHF channels 2 to 4 (54–72 MHz) and 5 to 6 (76–88 MHz), VHF channels 7 to 13 (174–216 MHz) and UHF channels 14–51 (470–698 MHz), but does not include TV channel 37 (608–614 MHz), which is used for radio astronomy research.) Twenty-four megahertz of spectrum currently used for TV broadcast channels 63, 64, 68, and 69 have been reallocated for critically important public safety needs. The remaining 84 MHz (currently TV broadcast channels 52–62 and 65–67) have been or will be auctioned for new wireless services. (Channels 60–69 (746–806 MHz) were reallocated for public safety and wireless communications services in 1998. Channels 52–59 were reallocated for new wireless services in 2001.)

A. Status of DTV Operations

8. In 1997, the Commission granted eligible licensees a paired channel for digital operations during the transition and set dates for construction and operation of broadcasters' facilities on their allotted DTV channels. Pursuant to the construction schedule set forth in Section 73.624(d) of the Commission's rules, affiliates of the top four networks in the top ten television markets were required to complete construction of their DTV facilities by May 1, 1999; top four network affiliates in markets 11–30 by November 1, 1999; all remaining commercial television stations by May 1, 2002; and all noncommercial educational (''NCE'') television stations by May 1, 2003.

9. As of April 2, 2007, 1,702 television stations in all markets (representing approximately 98.8 percent of all stations) have been granted a DTV construction permit (''CP'') or license. A total of 1,603 stations are now broadcasting a digital signal. Of these, 1,215 stations are authorized with licensed facilities or program test authority and 388 stations are operating pursuant to special temporary authority (''STA'') or experimental DTV authority.

10. In the top 30 television markets, all 119 top-four network-affiliated television stations are on the air in digital, 110 with licensed DTV facilities or program test authority and nine with STAs. In markets 1–10, all 40 top-four network affiliated stations are providing digital service, 38 with licensed DTV facilities and two with STAs. In markets 11–30, all top-four 79 network affiliated stations are providing DTV service, 74 with licensed DTV facilities and five with STAs.

11. Approximately 1,230 commercial television stations were due to commence digital broadcasts by May 1, 2002. As of April 2, 2007, 1,136 of these stations (92.4 percent) are broadcasting a digital signal. In addition, approximately 373 NCE television stations were required to commence digital operations by May 1, 2003. As of April 2, 2007, 348 (93.3 percent) of these stations are broadcasting a digital signal. (The commercial and NCE TV stations that have not commenced digital broadcasts were required to file a request for extension of additional

time to complete construction of their DTV facilities by the deadline established for them in 47 CFR 73.624(d)(1).)

B. Status of Consumer Capability to Receive DTV Signals

12. In connection with the 2006 Competition Report, the Commission requested information about the number of households relying solely on over-the-air broadcast television for programming. (The Commission also sought information about the number of cable and satellite households that rely on over-the-air service on one or more of their television sets not connected to a multichannel video programming distributor (''MVPD'').) In comments filed to that proceeding, the National Association of Broadcasters (''NAB'') indicated that there are approximately 69 million television sets are not connected to any MVPD service. Specifically, NAB reported that nearly 19.6 million households rely solely on over-the-air broadcast television, and there are approximately 45.5 million sets in those homes. NAB states that ''in these 19.6 million over-the-air households, there are approximately 1.3 million over-the-air digital sets.'' Thus, according to NAB, ''[t]here are roughly 18.7 million over-the-air households with only analog sets, and these households have about 44.2 million analog sets.'' NAB reports that an additional 23.5 million television sets in 14.7 million MVPD households remain unconnected to the MVPD service. NAB states that this 2006 data showing large numbers of over-the-air television sets is consistent with two surveys conducted in 2005.

13. The demand for DTV sets has grown with increased availability of DTV programming and receiving equipment and a steady drop in the price of such equipment. The Consumer Electronics Association (''CEA'') reports that the consumer electronics industry has invested $66.7 billion in DTV products since 1998. Moreover, CEA reports more than $75 billion in consumer investment in DTV products. According to CEA, 23.9 million DTV sets and monitors were sold in 2006. CEA predicts that 29.2 million DTV products will be sold in 2007, 33.4 million in 2008, 35.2 million in 2009 and 36.4 million in 2010. CEA estimates that DTV sales will represent 69 percent of all TV sales in 2006. (CEA projects that DTV sales will represent 92 percent of all TV sales in 2007.)

14. In order to promote the availability of reception equipment and protect consumers by ensuring that their television sets continue to work in the digital world just as they do today, the Commission established a DTV tuner mandate, which requires, as of March 1, 2007, that all television receiver equipment (*e.g.*, TV sets (all sizes), VCRs, digital video recorders, and any other TV receiving devices) manufactured or shipped in interstate commerce or imported into the United States, for sale or resale to the public, must be capable of receiving the signals of DTV broadcast stations over-the-air. (In 2002, the Commission initiated the DTV tuner mandate, with a phase-in period based on screen size to minimize the cost impact on consumers. In 2005, the Commission accelerated the implementation of the DTV tuner mandate to become effective on March 1, 2007 and expanded the mandate to include television sets less than 13 inches.)

15. In addition, subsidized digital-to-analog (''D-to-A'') converter boxes will be available to eligible consumers starting January 2008, further promoting access to digital reception equipment. (*See Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes,* NTIA Docket No. 0612242667–7051–01, Final Rule, 72 FR 12097 at paragraph 8 (*''NTIA Coupon Program Final Rule''*); 47 CFR 301. Starting January 1, 2008, all U.S. households will be eligible to request up to two $40 coupons to be used toward the purchase of up to two, D-to-A converter boxes, while the initial $990 million allocated for the program is available; 47 CFR 301.3–4. If the initial funds are used up and the additional funds (up to $510 million) are authorized, eligibility for the coupons will be limited to over-the-air-only television households. Eligible consumers will have until March 31, 2009 to make a request for these coupons.) This subsidy program, which was created by the DTV Act, will allow consumers with analog-only TV sets to receive over-the-air broadcast programming after the February 17, 2009 transition date, when analog broadcasting ends. Without a D-to-A converter box, consumers will not be able to view full-power TV broadcasts after the transition date unless they purchase DTV sets (television sets with a built-in digital tuner) or subscribe to a pay television service. Congress directed the National Telecommunications and Information Administration (''NTIA'') of the U.S. Department of Commerce to administer this subsidy program. (The DTV Act directs the Assistant Secretary for Communications and Information to ''implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes.'' The purpose of the program is to enable consumers to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service.) In March 2007, NTIA issued final rules to implement the program, which subsidizes the purchase of D-to-A converter boxes.

C. Status of Broadcasters' Transition

16. Stations are responsible for meeting the statutory deadline for the DTV transition. The Commission has no discretion to waive or change this transition date. Full-power broadcast stations not ready to commence digital operations upon expiration of the deadline for the transition on February 17, 2009 must go dark and risk losing their authorizations to operate after the transition date. (A station failing to meet its construction deadline may be subject to license revocation procedures (47 U.S.C. 312), the issuance of forfeitures (47 U.S.C. 503), or other remedial measures, such as admonishment. For example, we remind licensees that ''if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary;'' 47 U.S.C. 312(g). If discontinuing operations, stations must also be mindful of the Commission's rules.)

17. We have proposed post-transition channel assignments for all eligible stations. (These post-transition channel assignments largely were based on the choices made by licensees during the channel-election process. Eligibility for a proposed post-transition channel assignment was limited to existing Commission licensees and permittees.) In the proposed new DTV Table, 1,812 stations received proposed post-transition DTV channels. (This total includes 1,806 stations announced in Appendix A to the *Seventh FNPRM* and six additional stations announced in a subsequent Public Notice. Additional new permittees may also be announced before the transition deadline.) Of these, 1,178 stations received the DTV channel on which they are currently authorized, 517 stations received the NTSC channel on which they are currently authorized, and 117 stations received a different channel from which they are currently authorized.

18. The process of transitioning the entire TV broadcast industry to digital-only operation on each station's final channels will be complex. Accordingly, stations already should be planning their transition to digital-only service on their post-transition channel. Some stations may now be ready, or very close to ready, to make their transition. We have provided a list of 752 stations that we believe fall into this category and seek input from those stations regarding our assessment.

19. Most stations, however, will need to take significant steps to accomplish their transition. Stations' situations will vary based on their final channel assignments in the new DTV Table and whether, and if so to what extent, they must change their transmission facilities to operate on their post-transition channels. As described below, stations may seek to change their antenna or tower locations. (A station that must change its DTV tower location may face a considerable challenge, especially if the station must construct a new tower. Such a station must consider whether there are any existing towers that can be used or if a new tower must be constructed. Because of the lead times involved in purchasing or leasing land with appropriate FAA clearances, local and state zoning requirements, and varying timelines for designing the new tower, ordering equipment, delivery of equipment, and construction-related issues, such a station must begin planning as soon as possible in order to transition by the deadline. In some cases, building a new tower at this stage in the process may no longer be a viable option.) Stations may also need to change their effective radiated power (ERP), antenna height above average terrain (HAAT) or antenna pattern as set forth in the new DTV Table Appendix B, as adopted.

20. Before discussing the issues that must be addressed to complete the transition, we first categorize the circumstances that stations are in to describe what stations in each group must accomplish. First, there are stations that will remain on their current DTV in-core channel. Second, there are stations that will return to their analog in-core channel. Third, there are stations that will move to a completely new in-core channel. In addition to these three general categories, stations without a paired channel (*i.e.*, ''singleton stations'') that will ''flash cut'' from broadcasting on their analog channel to broadcasting on a digital channel raise unique issues that we will consider separately. (''Singletons'' or ''single-channel licensees'' refers to those licensees that do not have a second or ''paired'' channel to convert to DTV. ''Flash-cut'' refers to the situation where a station gives up its pre-transition digital channel and transitions to digital service using its analog channel or a newly allotted channel.) We seek comment on these categories and circumstances in general and on the particular tentative conclusions, proposals and queries in the Issue Analysis (section V), below.

1. Category One: Stations Remaining on Their Current DTV In-Core Channel

21. There are 1,178 stations remaining on their current DTV in-core channel for post-transition operations, based on the proposed new DTV Table. Most of these stations will have a relatively simple transition because they already have the authorizations necessary to operate at their proposed post-transition facilities as specified in the proposed new DTV Table Appendix B. In fact, many of these stations have already constructed and received licenses for their post-transition facilities, and so will simply turn off their analog service to complete their transition.

22. Some stations in this category, however, may not have completed their authorized construction. This would include a station that has not built anything and has a CP or extension of its ''checklist'' deadline and a station that has constructed a reduced facility and is operating pursuant to Special Temporary Authority (''STA''). In addition to turning off their analog service, these stations may need to make changes to match their post-transition facilities as specified in the new DTV Table Appendix B. The difficulty faced by these stations will depend on the type of change and degree of change required to complete their authorized construction. (For example, stations in this category may need to adjust their transmitter power, their antenna design, their antenna location, or some combination thereof. We expect that relatively minor adjustments to operating power can be done easily, perhaps through the use of in-house engineers. Changes involving more significant power changes and/or changes to transmitting antennas may require more time and effort. For example, a number of stations currently have a top-mounted analog antenna and a side-mounted digital antenna, and to provide full digital service will need to re-mount the digital antenna to the top of the tower. Also, if an entirely new transmission line and/or antenna must be installed, additional time will be needed to order the transmission line and antenna and have it delivered to the site.)

23. Furthermore, some of these stations may have pending applications with unresolved international coordination issues. Licensees in this category with pending applications should consult with the Commission staff about the timing for action on their applications. In addition, they should coordinate with Commission staff regarding necessary modifications to their applications that will result in international approval. They may need to proceed with constructing authorized facilities to the extent approved by Canada or Mexico if the issues delaying action on their applications cannot be resolved in time to allow construction to be completed before the end of the transition. (These stations may be required to adjust their transmitter power, their antenna location, their antenna design, or some combination thereof.)

2. Category Two: Stations Returning to Their Analog In-Core Channel

24. There are 517 stations that will return to their current analog in-core channel for post-transition operations, based on the proposed new DTV Table. (This group of stations includes some analog singletons and flash-cutters.) Stations in category two may face each of the category one challenges involving tower construction, antenna replacement or relocation, and transmitter replacement or power adjustments.

25. In addition, these stations may need to determine whether they can use any of their analog or digital transmission equipment (*e.g.*, transmitter, transmission line or waveguide, and antenna). If a station finds it has a transmitter that it could use, it will also need to determine whether that transmitter can provide the appropriate power level. It is our understanding that a station that is going to stay within a spectrum band (low-VHF, high-VHF or UHF) and change its frequency within 5 or 6 channels (36 MHz or less) will most likely require fewer technical changes than if the change of broadcast frequency is more than 6 channels. We expect that channel moves of fewer than 5 or 6 channels may require only minor modifications to the station's digital transmitter, whereas more significant changes may require major modifications or an entirely new transmitter. We seek comment on these assumptions.

26. Stations that will return to their current analog channel also may need to determine whether their current analog

or DTV antenna can be used. Generally, the design, condition and channel of operation of their current antennas, as well as the stations' directional antenna characteristics established in the new DTV Table Appendix B, as adopted, must be considered when these stations evaluate the suitability of their antennas for post-transition DTV operation. The ability of these stations to use an existing digital antenna may depend upon how significant the change in channel numbers will be for these stations as they move from their current DTV channel back to their current analog in-core channel. It is our understanding that channel moves of more than 5 or 6 channels will likely require a new antenna and transmission line or new waveguide. We seek comment on these assumptions.

27. These stations also must consider the impact on their analog TV service, which might be disrupted entirely or limited in reach to a smaller area during periods of work on the tower. For example, a temporary reduction in coverage might be due to reduced power analog TV operation at a backup site in order to facilitate construction on the main tower facility.

3. Category Three: Stations Moving to a Completely New In-Core Channel

28. There are 117 stations that will move to a completely new in-core channel for post-transition operations, based on the proposed new DTV Table. These stations face similar challenges to those returning to their analog (in-core) channel. In addition, these stations will need to coordinate with other stations to complete their move. For example, another station may occupy the relocating station's post-transition channel or it may occupy an adjacent channel (located in the same or a nearby area) to the relocating station's post-transition channel. Also, these stations may find that their tower site cannot support three antennas at once, as may be necessary to accommodate their current analog and DTV operations while preparing for broadcasting on their post-transition channel.

4. Singleton Stations

29. There are 137 stations that do not have a paired channel (*i.e.*, stations that do not have both an analog and a digital channel), based on the proposed new DTV Table. These stations are commonly referred to as ''singletons.'' These stations fit in one of the preceding three categories, but they may encounter different challenges and circumstances that deserve special consideration in this review. Specifically, for this discussion, ''singletons'' include (1) those stations described in footnote 101 of the *Second DTV Periodic Report and Order* as licensees that did not receive a second or ''paired'' channel to use during the transition to DTV; (2) those stations that had a paired DTV channel and that we authorized to discontinue providing analog TV service; (3) those paired-channel stations that gave up their interim DTV channel pursuant to ''flash cut'' approval; and (4) those paired-channel stations that we propose to allow to ''flash cut.'' Singletons include DTV and analog TV stations, and can be unbuilt, operating at reduced facilities, or fully constructed and licensed. Analog TV singletons will be flash cutting from broadcasting on their analog channel to broadcasting on a digital channel. Flash-cutting often will involve singletons ending their analog TV operation and beginning their DTV operation on their current analog channel, but in some cases will require that a station change to a new channel for post-transition operation. Singleton stations, like those with paired channels, are responsible to ensure that they have completed the construction of their digital facilities by the February 17, 2009 deadline, except for stations whose initial CPs expire later. (Single-channel stations receive a CP with a three-year construction period. Thus, new stations whose CPs were granted after February 2006 will have construction deadlines later than February 17, 2009.) After February 17, 2009, stations that have not constructed analog facilities may only construct digital facilities on their post-transition channel.

30. Singleton licensees and permittees should have a post-transition channel in the proposed new DTV Table and proposed facilities specified in the proposed new DTV Table Appendix B, provided such permittee status is announced by Public Notice before the order establishing the new DTV Table is adopted. DTV singletons remaining on their current DTV channel for post-transition operations face the same challenges identified in category one above. These stations must complete authorized construction consistent with the new DTV Table Appendix B, as adopted. Stations that have done so and are operating and licensed need not take any further steps at this time. DTV singletons that have not completed construction must do so as discussed below. A few DTV singletons are moving to different channels in the new DTV Table, including some currently authorized for out-of-core operations. In addition to the potential challenges described for paired stations going to a new channel for post-transition operation (category three in the preceding section), unbuilt DTV singletons must complete their required construction by their CP expiration date, whether that date is before or after the transition deadline.

31. Analog singletons that will remain on their currently authorized channel for post-transition operations face the same challenges identified in category two above. Unbuilt analog singletons must also meet their CP expiration date requirements. Depending on the time left for them to complete construction, most of these stations should consider requesting that the Commission modify their authorization to specify DTV operation, particularly stations that have recently received CP grants. (Stations that receive a new CP and that will remain on this channel for post-transition operations may either construct their analog facilities (for use until the end of the transition) or apply to the Commission for permission to construct a digital facility on their analog channel for post-transition operations.) Stations in this situation that choose to construct their authorized analog broadcast facility for operation until February 17, 2009 should plan for its conversion to DTV when they purchase their transmitter and antenna system.

32. Analog singletons moving to a new channel for post-transition operations face the same issues identified in category three above. Some also have a CP for their analog channel that expires either before or after the transition deadline. Stations that have an analog CP expiring before the transition deadline should consider applying for a modification of their analog CP to make it easier to complete the required analog channel construction while also building their post-transition facility. They also should take steps to efficiently complete this simultaneous dual-channel construction of both their pre-transition analog and post-transition facilities (for example, having a tower crew install both antennas at the same time or ordering an antenna or transmitter that can be readily converted from analog operation to DTV operation). They may also want to explore the possibility of requesting that their single-channel analog authorization be modified to specify pre-transition DTV operation on their post-transition channel. Such a modification would require interference protection to be provided to all potentially affected stations and construction to be completed before the station's CP expires. Stations whose

analog CP will expire after the transition deadline should consider applying for a modification of their analog CP to specify the post-transition facilities that they will need to complete before their CP expires. As noted above, February 17, 2009 is the deadline for all full-power television broadcast stations to end analog transmissions.

V. Issue Analysis

33. In this Third DTV Periodic Review, we consider how to ensure that full-power TV broadcast stations complete their transition to digital-only operations by the statutory deadline. Specifically, we consider when stations may and must cease operating on their analog channel, when stations may and must begin operating on their post-transition channel, and what regulatory flexibility we can provide to facilitate these efforts. By statute, stations must cease analog operations by 11:59 p.m. on February 17, 2009. Stations, thus, should have their digital facilities in place and ready to commence operations no later than 12 a.m. on February 18, 2009.

34. We seek comment on what actions the Commission should take to facilitate broadcasters' completion of the transition by the statutory deadline. We seek comment on how to ensure that broadcasters (1) complete construction of their post-transition facilities in a timely and efficient manner; and (2) have in place (in-core) facilities that can reach their viewers. In view of the statutory change from a soft to a hard transition deadline, the Commission's focus has moved beyond simply ensuring that stations are operating in digital. Our focus is now on overseeing broadcasters' construction of their final, post-transition channel with facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog.

35. We begin by proposing that every full-power television broadcast station file a form with the Commission that details (1) the current status of the station's digital transition; (2) the additional steps, if any, the station needs to take to be prepared for the switch-over deadline; and (3) a plan for how it intends to meet that deadline. These filings will be posted on the Commission's website. We believe that these forms will assist the Commission, industry, and the public in assessing progress and making plans for the digital switchover date.

36. We also consider when stations may reduce their current (pre-transition) television service in order to complete their transition. Next, we consider the deadlines by which stations must construct and operate their current DTV channels or lose interference protection—or even authority to operate—on those channels. Third, we propose deadlines for the construction and operation of post-transition facilities and consider the ability of stations to transition early. We also consider the steps necessary for broadcasters to construct and operate their post-transition channels. Issues raised in this section include the rules, procedures and interference standards for stations to file applications for CPs to build their post-transition DTV facilities and to request authorization to maximize their facilities. Finally, we address other issues related to the DTV transition. (While we recognize the Commission's rules for full-power television will need to be updated to eliminate outdated references to analog and out-of-core television service and clarify engineering issues that differ for digital transmission and analog transmission, these housekeeping matters will be addressed in a separate rulemaking in the DTV proceeding. We, nonetheless, seek comment on whether resolution of any housekeeping issues requires more immediate attention.)

A. Reduction and Termination of Analog Service

37. In this section, we consider the reduction and termination of stations' analog TV service. Until February 17, 2009, the Commission's rules require stations to continue operating their existing licensed analog facilities. (Moreover, the public has a legitimate expectation that existing broadcast services will be maintained.) To best achieve their respective transitions, however, some stations may find it desirable to reduce or terminate their analog operations before the February 17, 2009 transition date. In some cases, stations may need to reduce or end their analog service because such operations may impede construction and operation of post-transition (digital) facilities. Such circumstances may include, but are not limited to: (1) Stations that would like to switch their side-mounted digital antenna with their top-mounted analog antenna before the end of the transition; (2) stations that need to add a third antenna to their tower but cannot do so without reducing or ending analog service because the tower cannot support the additional weight; and (3) stations that are terminating analog service early as part of a voluntary band-clearing arrangement. We seek comment on these and other circumstances where stations can facilitate their transitions by reducing or terminating their analog service in advance of the transition deadline.

38. *Background.* The Commission generally has not favored reductions in television service. Proposals that would result in a loss in TV service have been considered to be *prima facie* inconsistent with the public interest, and must be supported by a strong showing of countervailing public interest benefits. Consistent with this precedent, the Commission allows stations to reduce their service from that required by their licenses only upon an appropriate public interest showing. Losses in service may be justified, for example, to facilitate the station's transition to DTV. (The Commission has placed a very high priority on accelerating the television industry's transition to DTV.) The Commission is generally most concerned where there is a loss of an area's only network or NCE TV service, or where the loss results in an area becoming less than well served, *i.e.*, served by fewer than five full-power over-the-air signals. In cases in which a station seeks to reduce analog TV service, it can also use an engineering analysis performed in accordance with the Office of Engineering and Technology's OET Bulletin No. 69 (''OET 69'') methodology to show that the area where service would be reduced is area that is already terrain shielded such that viewers located in that area do not actually receive the station's signal over-the-air now.

39. Notwithstanding the strong public interest in maintaining TV service, the Commission does permit the early return of out-of-core (TV channels 52–69) analog channels under certain circumstances in order to facilitate the DTV transition. The Commission established policies to facilitate voluntary ''band-clearing'' of the 700 MHz bands to allow for the introduction of new public safety and other wireless services and to promote the transition of out-of-core analog TV licensees to DTV service inside the core TV spectrum. Generally speaking, these policies provide that the Commission will approve voluntary agreements between incumbent broadcasters and new licensees to clear the 700 MHz band early if consistent with the public interest. The Commission has approved several such requests to return out-of-core channels in accordance with this band-clearing policy.

40. The Commission's 700 MHz band-clearing policies differ somewhat depending on whether a station is located on TV channels 59–69, which might affect use of the upper portion of the band, or on TV channels 52–58, which would only affect use of the

lower portion of the band. Envisioning the early recovery of TV channels 60–69, the Commission established a ''rebuttable presumption'' favoring requests for voluntary band-clearing involving channels 59–69. (The Commission established its policies on voluntary band-clearing for TV Channels 59–69 in a series of orders. The Commission initially stated that it would ''consider specific regulatory requests needed to implement voluntary agreements'' between incumbent broadcasters and new licensees to clear the Upper 700 MHz Band early, if consistent with public interest. Next, the Commission established a rebuttable presumption favoring the grant of requests that would both result in certain specific benefits and avoid specific detriments. These policies were further extended to ''three-way'' band clearing arrangements, in which non-Channel 59–69 broadcasters were also potential parties. Finally, the Commission provided certain additional flexibility to facilitate voluntary agreements for early clearing and granted a request for relief from two specific DTV-related requirements.) In contrast, the Commission did not anticipate recovery of TV channels 52–59 until after the DTV transition was complete and, as a result, decided to consider requests for voluntary band-clearing involving those channels on a case-by-case basis. In this case-by-case review, the Commission considers whether grant of the request would result in public interest benefits, such as making new or expanded public safety or other wireless services available to consumers, especially in rural or other underserved communities. The Commission weighs these benefits against any likely public interest harms, such as the loss of any of the four stations with the largest audience share in the designated market area, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for NCE TV broadcast service, or a negative effect on the pace of the DTV transition in the market.

41. *Discussion.* In light of the hard deadline for the cessation of analog TV service, we believe the most significant public interest objective should be to ensure that stations meet the transition deadline. The original statutory provision requiring the termination of analog broadcasts established December 31, 2006 as the last day for analog operations, but allowed that deadline to be postponed if an 85 percent DTV reception benchmark was not reached in a given market. The Commission's goal under this former approach was to increase DTV operations as quickly as possible without causing significant analog service loss. We believe, however, that Congress' adoption of the hard deadline of February 17, 2009, now weighs in favor of an increasing tolerance for the loss of analog service as we near the switch-over date and where it will facilitate the transition.

42. *Stations with Out-of-Core Analog Channels.* As noted above, stations that might affect the upper 700 MHz band (*i.e.*, TV channels 59–69) can receive a ''rebuttable presumption'' favoring their requests to terminate analog service. We believe the disparate band-clearing treatment with respect to stations in the lower 700 MHz band (*i.e.*, TV channels 52–58) is no longer appropriate. The hard deadline applies equally to both portions of the 700 MHz band. In addition, Congress has mandated that the Commission begin the auction of recovered analog broadcast spectrum in the 700 MHz band no later than January 28, 2008. (The DTV Act unified the timing of auctions for the assignment of remaining spectrum from TV Channels 52–69. The Communications Act now requires the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008 and deposit the proceeds of such auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008.) Accordingly, we propose to apply the same ''rebuttable presumption'' standard to voluntary agreements for clearing TV channels 52–58 as now applies to such agreements for clearing TV channels 59–69. (In other words, we propose to apply the relaxed ''rebuttable presumption'' standard to all out-of-core stations seeking to return their analog TV channels.) Moreover, we propose to apply the relaxed ''rebuttable presumption'' to out-of-core stations seeking to reduce rather than terminate their analog service. Requests to reduce or terminate analog service would be made in accordance with the Commission's rules. (Stations making requests to reduce analog TV service should do so in accordance with the rules to modify an existing license or authorization by using FCC Form 301 (commercial stations) or FCC Form 340 (NCE stations). Stations making requests to terminate TV service should do so in accordance with the rules to modify an existing license or authorization and to discontinue operations. Stations discontinuing only one service of their paired license, however, should not return their license or authorization, as would otherwise be required by 47 CFR 73.1750. In addition, stations making requests to reduce service may, if more applicable, instead apply for an STA pursuant to 47 CFR 73.1635. Consistent with the rules for license modification and discontinuance of operation, stations terminating their service may send a letter to the Video Division of the Media Bureau and send an e-mail to *analog@fcc.gov* in lieu of filing an application.) We seek comment on our proposed treatment of out-of-core stations seeking to reduce or terminate their analog service.

43. *Stations with In-Core Analog Channels.* In contrast to out-of-core stations' return of their analog channels, in-core stations' requests to reduce and terminate analog service have been less favored to this point. We believe it may now be appropriate to examine the circumstances under which we will allow in-core stations to reduce or discontinue analog TV broadcasting. We seek comment on the factors and circumstances we should consider when evaluating in-core stations' requests to reduce or terminate their analog TV service before the February 17, 2009 transition date. We invite comment on ways to ensure that stations meet the statutory transition deadline, while still minimizing the loss of TV service to consumers. If we permit early reduction or termination of analog service, how do we ensure that the public continues to have access to news and information, including emergency and other public safety information during the transition?

44. First, with respect to a station requesting to reduce its analog service—short of terminating its analog broadcasting, we seek comment on whether we should establish a presumption that any reduction in a station's analog TV service is in the public interest if:

(1) The proposed reduction is directly related to the construction and operation of post-transition facilities and would ensure that the station or another station can meet the deadline;

(2) The proposed reduction in analog service is less than five percent of either the station's service area or its population served;

(3) The proposed reduction does not cause the loss of an area's only top-four network or NCE TV service;

(4) The proposed reduction does not result in an unreasonable reduction in the number of services available in that area; (We seek comment on what that number of services would be. For example, the Commission has previously been concerned where the loss results in an area becoming less than well served, *i.e.*, with fewer than five full-power over-the-air signals. In

other contexts, such as the satellite context, we note that the Commission has considered whether an area would become ''underserved,'' *i.e.*, an area with two or fewer full-service stations. We propose to allow stations to minimize the loss of service to their service area or population and satisfy this condition through the use of analog translators. As previously noted, the statutory deadline applies only to full-power stations. Stations interested in the temporary use of analog translators should file requests for STA in accordance with 47 CFR 73.1635.);

(5) The broadcast station proposing the reduction is able to deliver its signal to cable and satellite providers so that the reduced analog signal does not prevent cable and satellite carriage; and

(6) The broadcast station proposing the reduction commits to on-air consumer education about the station's transition and how to continue viewing the station.

We seek comment on the usefulness and timing of this proposal, including whether there are other factors or situations where we should presume that a reduction in service would be, or would not be, in the public interest. For example, should we consider the level of cable and satellite penetration in the areas that will lose over-the-air service? We also seek comment on whether and, if so, how these factors should be relaxed as we approach the DTV transition date. As noted above, requests to reduce analog service would be made in accordance with the Commission's rules.

45. If a station is unable to qualify for the above proposed presumption, we propose to consider the station's request to reduce analog TV service (on an in-core channel) on a case-by-case basis. We invite comment on the appropriate showing and balancing of factors to consider in such a case-by-case analysis. As above, we seek comment on whether we should permit an increasing amount of analog TV service loss the closer we get to the end of the transition. What information must stations provide to demonstrate that reduced analog service would be in the public interest? We would expect that our case-by-case analysis would involve consideration of the factors discussed above. For example, we believe that broadcasters must be able to deliver their signals to cable and satellite providers so that reduced analog signals do not prevent cable and satellite carriage. In addition, we believe that broadcasters must also commit to on-air consumer education about the station's transition and how to continue viewing the station. We seek comment on these proposals.

46. Some broadcasters have side-mounted antennas and similar problems that prevent them from completing the build-out of their digital facilities while they are still operating their full analog facilities. Such stations, if they are providing DTV service to 100 percent of their replication area, may want to wait until February 17, 2009 to move their digital antenna into its final position. This approach may be acceptable provided there is a minimal disruption of service after the deadline due to post-deadline construction activities. We seek comment on this approach and urge each station operating under these circumstances to consider how much of their replicated area is served by their side-mounted digital antenna. It is critically important that analog over-the-air viewers who obtain the necessary digital receivers (whether TV sets or D-to-A converters) are able to receive DTV service over-the-air upon expiration of the deadline for the transition on February 17, 2009. If it is necessary for stations to reduce analog service before the transition to be sure all viewers have digital service on and after the transition date, we will consider such requests.

47. With respect to a station requesting to terminate its analog TV service on an in-core channel, we seek comment on whether and, if so, under what conditions we would permit such an action. We would expect to apply a stricter standard to the early termination of analog in-core service than to a reduction in service. We believe our analysis of requests to terminate analog service would at least involve consideration of the relevant factors discussed above for a reduction of service. We seek comment on this proposal, and also on whether we should require a station requesting termination of analog in-core service to demonstrate that a reduction in service is an unacceptable alternative. As noted above, requests to terminate in-core analog service would be made in accordance with the Commission's rules.

B. Return of Pre-Transition DTV Channel; Flash Cut Requests

48. In this section, we consider whether and, if so, when to allow additional stations to return their pre-transition-only DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) and flash cut at or before the transition deadline from their current analog channel to their post-transition channel. The *Second DTV Periodic Report and Order* permitted stations in certain situations to surrender their pre-transition DTV channel, operate in analog on their analog channel, and then flash cut to digital by the end of the transition on their post-transition channel. As the Commission noted, the potential public interest benefits of flash cuts include freeing the station to focus its efforts on completion of its post-transition channel and the creation of opportunities for the provision of public safety and other wireless services on the pre-transition DTV channel. Based on the criteria established in the *Second DTV Periodic Report and Order,* the Media Bureau has approved the flash cut requests of numerous stations. In this Third DTV Periodic Review, we consider expanding the range of circumstances in which we will allow stations to flash cut.

49. *Background.* In the *Second DTV Periodic Report and Order,* the Commission permitted satellite stations to flash cut because of their unique status and circumstances and provided for these stations to notify the Commission of their decision to flash cut by their initial channel election deadline. (TV satellite stations are full-power broadcast stations authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is typically commonly owned. Unlike full-service stations, satellite stations have chosen to forego or relinquish full-service status and instead retransmit the programming of a parent station because full-service operation of the satellite facility is not economically viable. Eligible satellite stations were assigned a paired DTV channel in the current DTV Table. The *Second DTV Periodic Report and Order* recognized that most satellite stations operate in small or sparsely populated areas that have an insufficient economic base to support full-service operations.) The Commission stated that satellite stations opting to flash cut would retain their interference protection (defined in the proposed new DTV Table Appendix B) as if they had met the applicable replication/maximization build-out requirements.

50. The Commission also permitted stations with out-of-core DTV channels to flash-cut under certain conditions and required notification of their decision to flash cut by their initial channel election deadline. The Commission presumed that granting such requests would be in the public interest if the station demonstrated that (1) it was assigned an out-of-core DTV channel, and (2) grant of the request would not result in the loss of a DTV channel affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox). (The

Commission has ''relied on affiliates of the four largest national television networks to achieve the necessary milestones throughout the DTV transition.'' The Commission also noted that the presumption is neither conclusive nor dispositive and that special circumstances raised by the resulting loss of digital broadcast service could rebut the presumption.) In the case of requests that did not meet these criteria, the Commission stated that it would consider all the relevant public interest factors in deciding whether to approve the request. These factors include the advancement of the provision of wireless and public safety services, the acceleration of the DTV transition, and the loss of broadcast service. Like satellite stations, full-service out-of-core stations that are permitted to flash cut would retain their interference protection (defined in the new DTV Table Appendix B, as adopted) as if they had met the applicable replication/maximization build-out requirements. The Commission also stated in the *Second DTV Periodic Report and Order* that stations would not be eligible to flash cut if they ''have been denied an extension of the construction requirements and admonished because they failed to demonstrate that they are meeting the necessary criteria for an extension and have not come into compliance.''

51. The Media Bureau recently approved by Public Notice the flash cut requests of 32 stations based on the criteria established in the *Second DTV Periodic Report and Order.* These stations were approved to turn off or discontinue construction of their pre-transition DTV channel. In addition, the Public Notice invited any other station to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order.*

52. *Discussion.* We seek comment on whether and, if so, under what circumstances we should accept new requests by stations to return their pre-transition DTV channel before the end of the transition and ''flash cut'' from their analog channel to their post-transition channel (which must be different from their pre-transition DTV channel). (Stations may continue to obtain flash cut approval pursuant to the *Second DTV Periodic Report and Order* and *Flash Cut PN.*) For instance, we seek comment on the following factors: (1) Whether the DTV station is operating on TV channels 52–69; (2) whether the station is affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox); (3) whether the station's pre-transition DTV channel is allotted to another station for post-transition use and the station's return of the channel will facilitate the other station's construction of its post-transition digital facility; and (4) the station's financial hardship. We invite comment on these criteria and on other criteria that may be relevant. We encourage commenters to address the public's desire to continue to receive DTV signals that are currently available and the impact that allowing stations to turn off pre-transition DTV signals would have on the successful and timely completion of the transition. We also seek comment on the impact of this proposal on cable and satellite subscribers. Consistent with the decision in the *Second DTV Periodic Report and Order,* stations that have been admonished by the Commission for failure to meet their construction deadline would not qualify to flash cut.

C. Construction Deadline for Full, Authorized DTV Facilities

53. In light of the short amount of time remaining before the transition deadline, it is critical that stations finalize construction of their post-transition facilities expeditiously to ensure the provision of TV broadcast service to the public when analog transmissions cease. In this section, we consider whether to require stations to continue construction of pre-transition channels that are not going to be used by the station after the transition. We also consider the deadline by which we will require TV broadcast stations to complete construction of their post-transition facilities.

54. As discussed below, we are proposing to adopt a different approach for the remainder of the transition with respect to deadlines for construction of DTV facilities and interference protection. Until now, a primary focus of the Commission has been to facilitate the initiation of DTV service to the public during the transition. This approach was designed, in part, to accomplish the goal of completing the transition by the December 31, 2006 ''flexible'' deadline originally established by Congress, which allowed for exceptions to the deadline. (Guided by this statutory directive, the Commission established construction deadlines and ''use or lose'' policies that provided incentives to stations to provide DTV service during the transition, which in turn gave viewers an incentive to purchase equipment that would enable them to view these signals.) Now that Congress has established a ''hard'' deadline for completion of the transition, with no exceptions, we believe our emphasis should shift toward ensuring that DTV stations will be providing service on their final, post-transition channels by that date. In general, we now must focus on striking the appropriate balance between the public interest in assuring that post-transition channels are fully constructed by February 17, 2009, and the public interest in pre-transition digital and analog service. These, like other issues raised in this NPRM, require careful self-assessment by licensees to determine how best to serve the public while at the same time making efficient use of the resources available (manufacturing capacity, tower crews, etc.) available to them.

55. *Previous Construction Deadlines and Use or Lose Policies.* As discussed above, the DTV construction schedule adopted by the Commission in 1997, provided for varying construction deadlines based on the size of the market and type of station, with all stations required to construct by May 1, 2003. (Under this schedule, television stations in the 10 largest TV markets and affiliated with the top four television networks (ABC, CBS, Fox, and NBC) were required to build DTV facilities by May 1, 1999. Stations affiliated with those networks in television markets 11 through 30 were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations were to have constructed their DTV facilities by May 1, 2003.) In 2004, the Commission established two deadlines by which stations were expected to either replicate or maximize DTV service on their current (pre-transition) DTV channel or lose interference protection to the unserved areas on that channel. By July 1, 2005, top-four network affiliates in the top 100 markets were required to fully replicate or maximize if they will remain on their DTV channel after the transition. If these stations will move to another channel post-transition, they were required to serve at least 100 percent of their replication service population by July 1, 2005. By July 1, 2006, all other stations were required to fully replicate and maximize if they will remain on their current DTV channel after the transition. If they will move to another channel post-transition, they were required to serve at least 80 percent of their replication service population by July 1, 2006. The Commission stated that stations that met the applicable ''use-or-lose'' deadline and that are going to move to a different channel after the transition would be permitted

to carry over their authorized maximized areas to their new channels. In addition, these ''use-or-lose'' replication/maximization deadlines became the new deadlines for stations operating temporary DTV facilities pursuant to STA to complete construction of their licensed DTV facilities. (In 2001, the Commission temporarily deferred (until the Second DTV Periodic Review) the establishment of construction deadlines for these stations, provided they constructed initial DTV facilities designed to serve at least their communities of license.) Approximately 80 percent of the stations in each of these categories met their respective deadlines.

56. In the *Second DTV Periodic Report and Order,* the Commission noted that certain stations had not yet been granted an initial DTV construction permit. The Commission required that, by August 4, 2005, all such stations construct and operate ''checklist'' facilities that conform to the parameters of the DTV Table and other key processing requirements. The Commission stated that it would consider requests for waiver of the August 4, 2005 deadline on a case-by-case basis, using the criteria for extension of DTV construction deadlines. (''Checklist'' facilities have power and antenna height equal to or less than those specified in the DTV Table and are located within a specified minimum distance from the reference coordinates specified in the DTV Table. Because these facilities comply with the interference requirements specified in the rules, no further consideration of interference is required. In addition, because the DTV Table has been coordinated with Canada and Mexico, ''checklist'' facilities generally do not require further international coordination.)

57. In two separate orders adopted subsequent to the adoption of this NPRM, the Commission addressed applications filed by stations for extensions of time to construct DTV facilities and/or waivers of the deadline by which stations must build DTV facilities in order to retain the ability to carry over interference protection to their post-transition channel (so-called ''use or lose'' waivers). In the *Construction Deadline Extension Order,* the Commission considered 145 requests for an extension of time to construct a DTV facility. For 107 stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these applications and gave these stations an additional six months from the release date of the *Construction Deadline Extension Order* in which to complete construction. For 29 stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these applications and gave these stations until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction. In the *Use or Lose Order,* the Commission considered 192 requests for waiver of the ''use or lose'' deadlines. For 102 stations whose pre-transition DTV channel is the same as the station's post-transition DTV channel, the Commission granted these stations a waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction. For 38 stations whose pre-transition DTV channel is different from the station's post-transition channel, the Commission granted these stations a waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction. In both of these orders, the Commission reminded stations that the hard deadline for termination of analog TV service prevents consideration of any request for extension of full-power analog TV service beyond that date. The Commission advised stations given an extension or waiver to utilize this time to take all steps possible to complete construction as further extension or waiver requests may be evaluated under a more stringent standard. We intend to treat similarly any stations that have a construction permit for which the original time to complete construction has not yet expired. These stations still have time remaining on their original construction permit to complete the build-out of their pre-transition DTV facilities or they may have had their original construction permit extended and the extended deadline has not yet expired. Thus, these stations are not addressed in the *Construction Deadline Extension Order or Use-or-Lose Order.* These stations should continue to follow existing rules and procedures (*i.e.*, continue to build their current DTV CP and, if that CP expires before they have completed construction, file a request for extension of the CP). Once final rules are adopted in this proceeding and become effective, stations will be subject to the new rules, including changes to Section 73.624(d).

58. *Revised Construction Deadlines and Use or Lose Policy.* Going forward, we propose to establish construction deadlines for DTV facilities that vary based on a station's channel assignments for pre- and post-transition operation and other circumstances affecting the station's ability to complete final, post-transition facilities. We believe this revised approach will best permit stations to focus their efforts on completing construction of final, post-transition facilities in the time remaining before the end of the transition. In conjunction with this approach, we propose to tighten the standard by which we evaluate future requests for extension of time to construct a DTV facility. In addition, with respect to construction deadlines of February 17, 2009 or later, we propose to evaluate all requests for additional time to construct under the ''tolling'' standard currently applied to analog broadcast TV stations and DTV singleton stations.

59. In this section, we consider construction deadlines for differently situated stations. First, we consider stations whose post-transition channel is different from their pre-transition DTV channel. These are stations that will be starting over with a new channel for DTV service. Second, we consider stations whose post-transition channel is the same as their pre-transition DTV channel. Unlike the first group, these are stations that have long been assigned the channel that they will use for post-transition operations. Third, we consider stations in other situations, including those facing unique technical challenges. Finally, we consider alternatives that might afford stations with regulatory flexibility. We seek comment on the proposed deadlines and tentative conclusions below, and also seek comment on alternative deadlines for these stations.

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

60. For stations whose pre-transition DTV channel is different from their post-transition channel, we propose not to require further construction of their pre-transition DTV channel and propose to establish February 17, 2009 as the deadline by which these stations must complete their final, post-transition facilities. These stations face a greater challenge than stations that will remain on the same DTV channel for post-transition operations. Stations moving to a new channel must apply for a construction permit on that channel and build new facilities based on the channel allotments in the new DTV

Table Appendix B, as adopted. Our proposal is designed to give stations facing the challenges associated with moving to a new DTV channel the maximum possible time to complete their post-transition facilities before analog transmissions must cease. We seek comment on this approach, and on whether an earlier construction date would still be appropriate in some circumstances.

61. With the establishment of the hard deadline, we believe the focus must turn to facilitating stations' efforts to construct their permanent DTV facilities that will be used to provide service after the transition. Therefore, at this stage in the DTV transition, we propose to allow a station to terminate further construction of its pre-transition DTV channel if this channel is not the station's post-transition channel. We request comment on this proposal. We believe that requiring stations to build or expand facilities that would only be operated until the end of the transition—*i.e.*, for less than two years—potentially could undermine the larger public interest objective of ensuring a timely transition to digital broadcasting by diverting limited resources from what is a far more important goal: The construction of final, post-transition facilities.

62. At the same time, however, we recognize that many stations whose pre-transition DTV channels are not the channels they will operate on post-transition have been diligent in meeting the deadlines established by the Commission for completing construction of their pre-transition facilities in order to provide DTV service to the public and to be permitted to carry over interference protection to their permanent DTV channel. It is not our intent to treat these stations unfairly or reward stations that have been less diligent in providing DTV service during the transition. However, as noted above, it is critical at this juncture to focus on the completion of final DTV facilities. In order to accomplish this goal, we believe we must permit stations to cease investing time and resources in completing facilities that will be used for the remainder of the transition simply in order to retain interference protection on their final, post-transition channels. Instead, we need to ensure that stations are focused on finalizing their post-transition facilities now to ensure service to the public when analog transmissions cease.

63. Accordingly, we propose to change our ''use or lose'' policy for stations whose pre-transition DTV channel is not their post-transition channel as follows. For such stations that received either an extension of their construction deadline in the *Construction Deadline Extension Order* or a waiver of their use-or-lose deadline in the *Use or Lose Order* (*i.e.*, until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding), we propose that these stations will not lose protection to their post-transition channels. We note that many stations that have not built their transitional facilities have faced recognizable impediments to doing so. In addition, most of these stations that have applied for an extension of time to construct and/or a waiver of the applicable use-or-lose deadline have had those requests granted, indicating that they were found to have a valid reason not to have met the applicable deadline. Thus, we do not believe that allowing stations that faced such impediments to retain interference protection on their final, post-transition facility unfairly rewards these stations. We seek comment on this approach. We specifically invite comment on the effect of this proposal on stations moving to a different DTV channel for post-transition operations that have fully complied with their use-or-lose deadlines and construction permit build-out requirements.

64. Under our proposal here, stations with a pre-transition DTV channel that is not the same as their final, post-transition channel have the following options. We request comment on our proposal, discussed below.

65. *Pre-Transition DTV Channel Unbuilt or Not in Operation.* We propose to permit a station that has not constructed an operational pre-transition DTV facility to elect simply to return its CP for that facility to the Commission and focus its efforts on construction of its post-transition facility. Thus, a station that has either not begun construction of its pre-transition DTV facility or has not begun operating that facility, and will be moving to a different channel at the end of the transition, may return the CP for that facility to the Commission. As stations in this situation are not currently providing digital service to the public, we believe it is appropriate at this stage in the transition to allow these channels to be returned. We request comment on this approach. Stations electing this option would be required to obtain flash cut approval in accordance with the proposals discussed in section V.B., *supra.* Stations electing this approach would be able to carry over interference protection to their post-transition channel, as noted above.

66. *Pre-Transition DTV Channel in Operation.* Stations with operational DTV facilities on a pre-transition channel may have several options. Under each of these options, we propose to permit a station to carry over interference protection to its post-transition channel, as noted above.

- First, stations may discontinue further construction on their pre-transition DTV facility and to operate the facility they have constructed at this point during the remainder of the transition while they focus on construction of their permanent DTV facility. We propose to permit these stations to file an application to modify their existing CP to match their pre-transition DTV facility in accordance with the Commission's rules. The station would then continue operation of the facility for the remainder of the transition without devoting resources to further build-out of that facility.

67. Second, stations may be permitted to cease operating their pre-transition DTV facility in certain circumstances. We propose that these stations must obtain flash cut approval in accordance with the proposals discussed in section V.B., *supra.*

- Third, stations may decide they would like to continue construction of their full, authorized DTV facility on their pre-transition channel. While we do not want to deny stations in this third category the opportunity to continue to build pre-transition DTV facilities and to provide service on these facilities for the remainder of the transition, we believe it is appropriate to require that these facilities be completed expeditiously. Accordingly, for stations in this third category, we propose to permit the station to continue to build its pre-transition DTV facility, but will require that construction be completed by the deadline established for them in the *Construction Deadline Extension Order or in the Use or Lose Order* (*i.e.*, 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding).

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

68. Many stations whose pre-transition DTV channel is the same as their post-transition channel have already made substantial progress toward construction of facilities that will be used to provide service after the transition. Specifically, they have already constructed their full,

authorized DTV facilities in accordance with their existing CP or license and the Commission's previous build-out requirements established in the *Second DTV Periodic Report and Order.* Some of these stations have built DTV facilities that match those defined in the proposed new DTV Table Appendix B and are, therefore, now ready for post-transition operations. (We remind stations of their continuing obligation to notify the Commission concerning changes in their facilities. Stations are expected to comply with the rules and may refer to adjustments in their facilities as described in the new DTV Table in their comments in this docket. To the extent that stations still need to modify their authorization, we propose to require them to file an application, as discussed below in section V.D. In addition, as we propose below, applications that match or closely approximate but do not exceed their new DTV Table facilities will be eligible for expedited processing.) Other stations whose pre-transition DTV channel is the same as their post-transition channel have built their full, authorized DTV facilities in accordance with their existing CP or license but for some reason these facilities do not match those facilities defined in the proposed new DTV Table Appendix B. (Stations may have certified facilities that were authorized by CPs they have not yet constructed, or that they requested in pending applications that have been held up by international coordination issues, or that are based on replication that their current CP or license does not exactly achieve. Stations may also have modified their CP or license since they filed their certification so that their currently authorized coverage no longer provides an exact match to their certified coverage.) These stations will need to file an application for a new CP or an application for modification of CP to change their facilities to match those facilities defined in the new DTV Table Appendix B, as adopted. We discuss below, in section V.D., the process by which stations must file such applications.

69. Other stations with the same pre- and post-transition DTV channel have not yet constructed their full, authorized DTV facilities. Some of these stations currently have a CP for their full, authorized DTV facility, some are operating reduced facilities pursuant to an STA, and some may not have constructed at all. These stations must complete construction and, in some cases, may have to apply for a new CP or for modification of their CP to receive authorization for facilities that match the facilities defined in the new DTV Table Appendix B, as adopted.

70. It is possible that a station with the same pre- and post-transition channel does not want to complete construction of its full, authorized facilities as described in the new DTV Table Appendix B. These stations must apply to modify their existing CP or license to reflect the facility they intend to construct or have constructed.

71. For stations whose post-transition channel is the same as their pre-transition DTV channel, we propose that the deadline to complete construction of their final, DTV facility is the deadline established for them in the *Construction Deadline Extension Order* or *Use or Lose Order* (*i.e.*, six months from the release date of those orders). For these stations, we believe it is appropriate to require that they complete construction of their final DTV facility by this deadline because they have already had a significant period of time in which to build their post-transition facilities and, indeed, should already have these facilities constructed. Unlike stations that will be moving to a different DTV channel for post-transition use, these stations have generally had the advantage of being able to plan for and commence construction of their post-transition facilities for more than 10 years. In contrast, stations moving to a different channel for post-transition operations have only recently been assigned their new channel and thus are only now able to apply for a construction permit for this channel and commence construction of their post-transition facilities.

72. We invite comment on this approach. In particular, we invite comment on whether there are stations in this group that must apply for a new or modified CP because their current CP does not match the facilities specified in the proposed new DTV Table Appendix B. Are the changes in the CP such that little, if any, of the equipment necessary for the facility for which they currently have a CP could be used in the facility specified in the new DTV Table Appendix B, as adopted? If we were to give these stations more time to construct, should we do so only where the difference between the facilities specified on the current CP and those defined in the proposed new DTV Table Appendix B is significant? If so, how should we define a ''significant'' difference in this context?

3. Other Situations

73. In this section, we separately discuss the proposed treatment of stations with side-mounted digital antennas or facing other circumstances whereby the operation of the station's analog service prevents the completion of the station's full, authorized post-transition facility as defined in the proposed new DTV Table Appendix B. We also discuss the treatment of stations granted a waiver of the August 4, 2005 ''checklist'' deadline and stations denied an extension of time to construct a pre-transition DTV facility or a ''use or lose'' waiver request.

74. *Stations Facing Unique Technical Challenges.* In the *Construction Deadline Extension Order,* the Commission granted the extension applications of four stations because these stations faced unique technical challenges (*e.g.*, side-mounted antenna-related issues) preventing them from completing construction of their DTV facilities. Most of these stations proposed to install their DTV antenna on the top of the tower where their existing analog antenna currently is housed. In order to top-mount the DTV antenna, these stations would have to relocate the analog antenna to another position on the existing tower or to another location altogether. These stations were granted an extension until February 17, 2009 to complete construction of their DTV facilities. Similarly, in the *Use or Lose Order,* the Commission identified 45 stations that have come close to meeting the applicable replication or maximization requirements but cannot fully satisfy those requirements because of unique technical challenges associated with operation of their analog, as well as construction of their digital, facilities. Some of the stations in this latter group are stations with top-mounted antenna issues; others include stations whose local power company cannot provide sufficient electrical capacity to the tower site to power both analog and full power digital operations, and stations that do not have space at their antenna site for both analog and digital equipment. These stations were granted a similar waiver of the ''use or lose'' deadline.

75. For the 49 stations referenced above that were granted an extension request or ''use-or-lose'' waiver because they faced unique technical challenges, we propose that the deadline for these stations to complete construction of their final, DTV facility is the deadline established for them in the *Construction Deadline Extension Order or Use or Lose Order* (*i.e.*, February 17, 2009). In general, we established pre-transition DTV construction deadlines, and have proposed post-transition construction deadlines herein, based on whether a particular station was going to use its pre-transition DTV channel for post-

transition operations. However, in the *Construction Deadline Extension Order or Use or Lose Order,* we did not rely on this distinction because stations with a top-mounted antenna issue face a unique and insurmountable impediment to construction (*i.e.*, they cannot put both an analog and a DTV antenna on top of the same tower). Accordingly, we propose to give all such stations until February 17, 2009 to complete their final, post-transition facilities. We also anticipate that these stations will take advantage of approaches proposed herein in the section concerning reduction in analog service prior to the end of the transition to facilitate construction of final, DTV facilities. We seek comment on this approach.

76. *Stations Granted Waivers of the ''Checklist'' Deadline.* In the *Use or Lose Order*, the Commission granted 10 requests for waiver of the August 4, 2005 deadline established for all television stations to construct and operate a ''checklist'' DTV facility. For four of these stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these stations a ''checklist'' waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction and begin operation of their ''checklist'' facilities. For six of these stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these stations a ''checklist'' waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction and begin operation of their ''checklist'' facilities.

77. We propose for these stations an approach dependent upon whether their pre-transition DTV channel is the same as, or different than, their post-transition channel. For the six stations granted ''checklist'' waivers whose pre-transition DTV channel is different than their post-transition channel, we propose to apply the procedures outlined at section V.C.1., *supra*, for stations that are moving to a different channel post-transition. Thus, for these stations we propose not to require further construction of their pre-transition DTV facility and propose to establish February 17, 2009 as the deadline by which these stations must complete their final, post-transition facilities. (In the *Use or Lose Order*, these stations were granted a waiver of the ''checklist'' deadline until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding.) These stations may cease further construction of their pre-transition facility. They may decide to operate the facilities they have constructed on their pre-transition channel for the remainder of the transition and, if so, they should apply to license those facilities and, if they do so, they would not be required to request further extensions of time to construct in order to retain full interference protection to their post-transition DTV channel. Alternatively, these stations could elect to pursue the options outlined in section V.A., *supra*, concerning reduction in analog service prior to the end of the transition. For the four stations granted ''checklist'' waivers whose pre-transition DTV channel is the same as their post-transition channel, we propose to apply the procedures outlined above at section V.C.2., *supra*, for stations with the same pre- and post-transition channels. Thus, these stations must complete their full, final post-transition facility by the deadline established in the *Use or Lose Order* (*i.e.*, six months from the release date of the *Use or Lose Order*). Any request for extension of time to construct beyond that date will be considered under the stricter extension criteria proposed herein. We invite comment on these proposals.

78. *Stations Denied An Extension of Time to Construct.* In the *Construction Deadline Extension Order*, the Commission denied the extension applications of five stations, admonishing three of these stations for their continuing failure to timely construct and affording these stations additional time to comply with the DTV construction rule. The one admonished station whose pre-transition DTV channel is the same as its post-transition channel was afforded six months from the release date of the Order to comply with the DTV construction rule, while the two admonished stations whose pre-transition DTV channel is different from their post-transition channel were afforded until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding. All three admonished stations were also made subject to the remedial measures for DTV construction adopted by the Commission. For these admonished stations, we propose that we will not consider any future requests for extension of time to construct pre-transition facilities. We note that the *Construction Deadline Extension Order* admonished these stations and subjected them to remedial measures and noted that the stations could be subject to additional sanctions if they do not comply with the measures and requirements set forth in that Order. In that regard, we propose that for the station who was admonished and whose pre-transition DTV channel is the same as its final, post-transition channel, if such station does not complete construction of its DTV facility by the deadline established in the *Construction Deadline Extension Order*, the station would be subject to additional remedial measures, such as but not limited to the loss of its pre-transition channel, the loss of its ability to carry over to its post-transition channel interference protection for the area unserved by its pre-transition facility, and the issuance of forfeitures. For the other two admonished stations, whose pre-transition DTV channel is not the same as their post-transition channel, because these stations have been denied an extension of their construction deadline and have been required to follow remedial procedures, we believe it is appropriate to treat these stations more strictly than stations that have met the current standard and been granted an extension of the construction deadline. However, we believe requiring these two stations to build their pre-transition channel would be inconsistent with the policy advanced throughout this document to shift our focus to construction of post-transition facilities. Therefore, we propose that these stations will not be required to construct their pre-transition facilities but will remain admonished and on a remedial program with respect to construction of their post-transition facilities. If these stations fail to meet the construction deadline established for their post-transition facilities, we propose that these previously admonished stations would also be subject to additional remedial measures similar to those applicable to stations whose pre-transition channel is the same as their post-transition channel (*e.g.*, the issuance of forfeitures). We request comment on these proposals. Our proposals here are not intended to conflict with the *Construction Deadline Extension Order* or the remedial measures or possible sanctions mentioned therein, but instead propose additional or alternative consequences for failure to construct by the applicable deadline.

79. *Stations Denied a Waiver of the Use or Lose Deadline.* In the *Use or Lose Order*, the Commission determined that

seven stations were unable to show that good cause existed to allow them additional time to meet their applicable ''use or lose'' deadline and, thus, were denied their ''use or lose'' waiver requests. Because these stations failed to meet the applicable replication/maximization requirements, they lost interference protection to the unused portion of the associated coverage area. In addition, these stations lost the ability to ''carry over'' their interference protection to their unserved DTV service area on their post-transition channel. We remind these stations that, with respect to their pre-transition channel, they must submit an application to modify their DTV construction permit to specify their reduced facilities, as directed in the *Use or Lose Waiver Order*. Nevertheless, we recognize that the proposals in this NPRM deemphasize the requirement that stations construct DTV facilities that will not be used for post-transition operations. Therefore, we seek comment on whether we should reevaluate the loss of interference protection for these stations with respect to their post transition channel.

4. Extension/Waiver of DTV Construction Deadlines

80. In light of the deadline for completion of the digital transition and in view of the changes proposed above to our construction deadline and use or lose policies, we believe it is appropriate at this time to consider the standard that should apply generally for grant of an extension of time to construct DTV facilities pre-transition. (This new standard will not apply to digital LPTV facilities.)

81. Under the current rules, the Media Bureau may grant a six-month extension of time to construct a DTV station if the licensee or permittee can show that the ''failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.'' The rules state: ''[s]uch circumstances shall include, but are not limited to (A) [i]nability to construct and place in operation a facility * * * because of delays in obtaining zoning or FAA approvals, or similar constraints; (B) the lack of equipment necessary to obtain a digital television signal; or (C) where the cost of meeting the minimum build-out requirements exceeds the station's financial resources.'' (To qualify under the financial resources standard, the applicant must provide (1) an itemized estimate of the cost of meeting the minimum build-out requirements; (2) a detailed statement explaining why its financial condition precludes such an expenditure; (3) a detailed accounting of the applicant's good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing and an explanation why those efforts were unsuccessful; and (4) an indication when the applicant reasonably expects to complete construction.) These rules apply to stations granted a paired license for analog and digital operation during the transition. The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests must be referred to the Commission.

82. We propose to revise and tighten this standard for extension of DTV construction deadlines to ensure that stations complete their DTV facilities and commence operation. The current standard was adopted early in the DTV transition process when stations were first trying to build digital facilities and applies only to stations with a paired license. The standard was revised to include consideration of financial resources at a time when broadcasters were still trying to meet the initial construction deadlines. At this point in time, however, the initial construction deadlines for DTV facilities passed several years ago and the deadline for completion of the transition is less than two years away. We believe that stations at this stage in the transition must finalize their construction plans and implement them. We tentatively conclude that we should revise Section 73.624(d)(3) of the rules, which sets forth the standard for extension of DTV construction deadlines, to make that provision substantially stricter. Specifically, we propose to eliminate Section 73.624(d)(3)(ii)(B), which permits consideration of circumstances related to the lack of equipment necessary to obtain a digital television signal in the evaluation of whether to grant a request for extension of time to construct. At this point in the transition, we believe stations have had ample time to order the equipment required to provide digital service and do not believe it is necessary or appropriate to grant stations additional time to construct because of equipment delays, absent extraordinary circumstances. We also propose to revise Section 73.624(d)(3)(ii)(C), which permits consideration of circumstances where the cost of meeting build-out requirements exceeds the station's financial resources. Specifically, in seeking a DTV extension, we propose that the licensee/permittee of a station may show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. (Our proposed showing of three years of negative cash flow is similar to the showing considered in determining whether a station is a ''failed station'' for purposes of a waiver of our local TV ownership rules. However, we do not intend to use the failed station standard in its entirety as applied in the context of local TV ownership in determining whether a station should be granted an extension of time to construct under our revised extension standard.) Thus, we propose to eliminate the existing four-part test for financial hardship and replace it with a new test. Stations seeking an extension based upon financial considerations would either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations also would be required to submit a schedule of when they expect to complete construction. We seek comment on this proposal. In particular, we seek comment on how this proposal should be applied to noncommercial educational stations, whose financial circumstances often differ from those of commercial stations.

83. Again, at this stage in the transition we believe all stations have had considerable time to address financial issues related to completion of their digital facilities and further consideration of such issues in connection with a request for additional time to construct should be limited to a situations like bankruptcy or receivership where a court generally controls the station's finances, or where the station can demonstrate severe financial hardship as discussed above. Thus, going forward, requests for extension of time to construct related to lack of equipment or the cost of meeting the build-out requirements other than where the station is in bankruptcy or receivership or is facing severe financial hardship as discussed above will not generally be granted.

84. However, we will continue to consider going forward requests for extension of time where the station is awaiting action by the Commission or a court on a pending application or appeal or where action on an application is being delayed for other reasons beyond the station's control, such as reasons related to international coordination. We will consider delays due to international coordination where resolution of the international coordination issue is truly beyond the

control of the station, such as where the failure to obtain coordination will not permit the station to construct facilities sufficient to replicate its analog coverage area. A station seeking to maximize that cannot obtain international coordination for such facilities may be required to construct facilities with a smaller coverage area. In addition, we will continue to consider circumstances related to an act of God or terrorism. We will revise 47 CFR 73.624(d) and FCC Form 337, accordingly, and will continue to require that any request for extension of time be filed electronically using the revised form. We propose to apply the revised rule concerning requests for extension of time to build DTV facilities to all requests for extension of construction deadlines occurring prior to February 17, 2009. This revised rule would apply, inter alia, to those stations whose pre-transition DTV channel is the same as their post-transition channel and that were granted extensions or waivers in the *Construction Deadline Extension Order* or the *Use or Lose Order*. We recognize that some stations may request further extensions of time to build and that other stations, whose deadlines have not yet expired, may request extensions of deadlines once their deadlines expire. We tentatively conclude that we will apply the revised rule to any requests that are pending at the time the revised rule becomes effective. We seek comment on these proposals and on this tentative conclusion. (We note that DTV singleton stations that were not eligible for a paired license for analog TV and DTV operation during the transition are not currently governed by 47 CFR 73.624(d)(3). These DTV singleton stations are currently subject to the tolling provisions of 47 CFR 73.3598(b) and we propose that these stations continue to be subject to the provisions of that section.)

85. We note that while we propose to establish a stricter standard for requests for extension of time to construct DTV facilities, we are also proposing, as discussed above, to eliminate the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel. Taken as a whole, we believe these proposed changes will help many stations facing financial challenges to complete construction of DTV facilities while also ensuring that broadcasters continue to focus on the timely construction of the facilities necessary to end analog transmission by February 17, 2009.

86. Post-transition we intend to take a different approach with respect to requests for additional time to construct DTV facilities. While the transition to digital broadcasting was underway, analog broadcasting remained the primary method by which the vast majority of American consumers received over-the-air television. As a result, while it was important to the transition that stations begin transmitting a digital signal, it was not critical to the ability of over-the-air viewers to view broadcast television that they do so. Accordingly, our extension criteria permitted grant of extensions of time to construct DTV facilities based on a number of different criteria. Once the nation moves to an all-digital broadcast service, however, we believe that application of a stricter ''tolling'' standard for additional time to construct is appropriate. Once DTV is the sole broadcast service, we believe requests for additional time to construct should be treated as we now treat such requests for all analog stations and DTV singletons.

87. Specifically, for all requests for additional time to construct DTV facilities for construction deadlines occurring February 17, 2009 or later, we tentatively conclude that we will consider such requests under the tolling standard set forth in Section 73.3598(b) of our rules, which currently applies to DTV singletons and analog TV stations, as well as AM, FM, International Broadcast, low power TV, TV translator, TV booster, FM translator, FM booster, and LPFM stations. Section 73.3598 provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (*e.g.*, floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review (*i.e.*, petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal), or construction is delayed by a cause of action pending in court related to requirements for construction or operation of the station (*i.e.*, zoning or environmental requirements). The rule further provides that a permittee must notify the Commission of any event covered under the provision and provide supporting documentation in order to toll the construction deadline. Permittees are also required to notify the Commission when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God automatically ceases six months from the date of the notification to the Commission unless the permittee submits additional notifications at six-month intervals detailing how the act of God continues to cause delays in construction and describing any construction progress and the steps the permittee has taken and proposes to take to resolve any remaining impediments. Section 73.3598 further provides that any construction permit for which construction has not been completed and for which an application for license has not been filed shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission. (The Commission has noted that there may be rare and exceptional circumstances, other than those delineated in its rules or decisions adopting the rules, that would warrant the tolling of construction time, *i.e.*, other circumstances in which a permittee is prevented from completing construction within the time specified on its original construction permit for reasons beyond its control such that the permittee would be entitled to tolling of the construction time under 47 U.S.C. 319(b). In these very limited circumstances, the Commission noted that it would entertain requests for waiver of its strict tolling provisions.) We seek comment on this approach. (We will consider further amendments after the transition is completed to eliminate rules that were adopted only for the construction of DTV stations during the transition. As part of that effort, we may eliminate 47 CFR 73.634(d)(3) and instead rely, as proposed herein, on 47 CFR 73.3598(b) for all construction, as we do today for the broadcast services. We also note that these proposals are for the full-power stations subject to the February 17, 2009 deadline. The rules pertaining to low power, translator and Class A stations will be the subject of another proceeding.) We also invite comment on whether it is necessary to amend Section 73.3598(a) to specify ''DTV'' or if the existing reference to ''new TV'' in this section will be adequate in conjunction with the clarification provided by the Order to be adopted in this proceeding. We also seek comment on whether we should afford small television broadcasters additional time to construct DTV facilities. (The Small Business Administration defines a television broadcast station as a small business if such station has no more than $13.5 million in annual receipts; 13 CFR 121.201, NAICS Code 515120. We note that small TV stations, as well as larger stations, must terminate analog broadcasting by February 17, 2009, and, therefore, should have their digital facility completed by that date.)

88. We note that, under the current rules applicable to DTV stations, the Commission has permitted a station to justify an extension request if the Commission has not acted on the station's modification application. Under the tolling standard we propose to apply to all construction deadlines February 17, 2009 and later, the filing of an application for modification of a construction permit would not be grounds for tolling of the construction deadline. We believe that transitioning DTV stations to the rule applicable to construction of analog TV and all other broadcast stations in this regard is appropriate post-transition. However, we propose that delays due to international coordination would not generally be grounds for tolling of a DTV construction permit with two exceptions. First, the Commission would toll a construction permit for a DTV station where the station could demonstrate that a request for international coordination had been sent to Canada or Mexico on behalf of the station and no response from the country affected had been received. Second, the Commission would toll a DTV construction permit where the station could demonstrate that the DTV facility approved by Canada or Mexico would not permit the station to serve the viewers currently served by the station's analog facility that would also be served by the station's digital facility approved by the Commission. We seek comment on these proposals and other changes to Section 73.3598.

5. Early Transition

89. Some stations that are moving to new post-transition channels (*i.e.*, not operating on either of their pre-transition channels) may want to begin operating on those new channels before the transition date. We seek comment from stations in this category on whether they believe they permissibly could operate on their post-transition channel before the February 17, 2009 deadline for terminating analog transmissions. We also invite comment on the potential benefits of early transition and the impediments that may exist. We believe that early transition could advance the transition if it provided improved DTV service and freed transition resources for those stations building later. Under what circumstances will stations be able to transition early without causing impermissible interference to another station (analog or digital)? We seek comment on whether there are any incentives we can or should provide to stations to operate on their post-transition channel early. We propose to allow early transition, provided such operations would not cause impermissible interference to another station. Consistent with our transitional interference protection policies, we propose that early transitioning stations must not cause more than 2.0 percent interference to any authorized analog-only TV station. Stations interested in transitioning early should indicate their intent to do so in their CP or modification applications for post-transition facilities. (We are proposing to revise FCC Forms 301 and 340 to allow stations to simultaneously apply for both pre- and post-transition facilities.) Because we tentatively conclude that stations cannot expand beyond their facilities defined in the new DTV Table Appendix B, as adopted, we believe early transitioning stations cannot cause additional interference to post-transition operations. We also propose to permit such stations to commence early post-transition operations that may be less than their full, authorized facilities, provided impermissible interference is not caused to another station (analog or digital). Broadcasters seeking to commence early post-transition operations would need to indicate whether doing so will result in a loss of their own analog or digital service and, if so, how they plan to address that loss in service. As discussed above in the analog service loss context, we seek comment on whether (and if so to what extent) a loss of service should be acceptable if it would help facilitate the transition. We seek comment on these proposals.

6. Additional Proposals to Provide Regulatory Relief

90. *Alternative Buildout.* We seek comment on whether to permit stations to request an STA to build less than their full, authorized post-transition facilities by the relevant construction deadline, provided these stations at least serve the same area and population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. Could such a proposal facilitate the transition without undermining viewers' over-the-air reception expectations after the transition date? We would apply the new construction deadlines and standard adopted in this proceeding for additional time to construct to the construction of such intermediate facilities that would meet the service requirement. If we adopt such a proposal, when must these stations construct their full, authorized post-transition facilities? If we do not afford such relief generally, should we afford such relief to small television broadcasters because of unique challenges they may face in completing their transition?

91. *Temporary Use of In-core Pre-Transition DTV Channels.* We believe that some stations that are returning to their analog channel or moving to a new channel for post-transition operations may be able to temporarily remain on their in-core pre-transition DTV channel and provide adequate service after the transition date without causing impermissible interference to other stations or preventing other stations from making their transition. We propose to afford these stations with this opportunity if doing so would facilitate their transition. We propose to allow these stations to choose to temporarily remain on their pre-transition DTV channel if:

(1) They serve at least the same area and population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. (Stations must ensure that consumers served pre-transition that obtain a D-to-A converter box through the NTIA program or who otherwise purchase DTV receiver equipment will be capable of receiving off-the-air DTV signals post-transition.); and

(2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. We tentatively conclude that the 0.5 percent interference standard proposed for post-transition operations in section V.F.1., below, would apply because such operations would occur after the transition deadline.

We seek comment on this proposal. We propose for stations to make such requests in accordance with the rules for STA. We believe affording such regulatory flexibility to these stations will facilitate the transition. We seek comment on this proposal, including its usefulness to stations and on whether it is consistent with the statutory transition deadline. (We note that out-of-core DTV stations are prohibited by statute from remaining on their original allotted DTV channel after the transition deadline. Therefore, this flexibility would not apply to DTV stations operating out-of-core.) Can a station readily determine whether its continued operation after February 17, 2009 on its pre-transition DTV channel would interfere with another station's transition or operation? If we adopt this proposal, how long should we allow stations to remain on their in-core pre-transition channel and when must these stations construct their full, authorized post-transition facilities? (Whatever post-transition construction deadline is

established for these stations, we propose to apply the new tolling standard adopted in this proceeding.) What effect would this proposal have on the operation of DTV receiver equipment, including D-to-A converter boxes? (It is our understanding that whenever a station changes channels, an over-the-air viewer using a D-to-A converter box (or DTV tuner-equipped set) will have to manually rescan for available channels in order to receive that channel.) Finally, we seek comment on the implications of our proposal with respect to the adoption of the new DTV Table.

92. *Channel Priority.* We recognize that there may be some situations where a station's ability to commence its post-transition operations will be dependent on another station's construction and operating plans. For example, station A may need to begin testing its digital facility on its post-transition channel 11 in order to be ready to operate after the transition date, but station B is currently using the channel for pre-transition (analog or digital) service. In such situations, close cooperation will be needed between these stations. We expect that broadcasters will make all possible accommodations to ensure that all stations will be able to provide digital service on their post-transition channels at the transition date. Stations are reminded that their authority to operate on a pre-transition channel, whether analog or digital, ends on February 17, 2009, unless they have applied for and been granted authority to remain on a pre-transition channel. We seek comment on whether and, if so, what steps the Commission should take to ensure a smooth transition in these circumstances.

D. Applications to Construct or Modify DTV Facilities

93. Stations that need to request authority to construct or modify their post-transition facilities must file CP or modification applications (*i.e.*, FCC Form 301 or 340). (The 634 stations that need to construct their post-transition facilities because they will not be using their currently authorized DTV channel for post-transition operations are expected to file after the DTV Table is adopted. Any of the 1,178 stations that will use their currently authorized DTV channel for post-transition operations but need to change their facilities because they do not have an authorization for their intended operations should also file an application. For example, a station that intends to operate its post-transition facility pursuant an existing STA operation must file an application to modify its CP. Also, some of these stations may need to apply to increase power or otherwise adjust their facilities because they are now operating under STA at reduced power and they are unable to construct their authorized CP facilities, but intend to operate with more than their current STA facilities (for example, they intend to raise their transmitting antenna to a higher height on their tower, but are unable to mount it at the authorized height). Other stations may need to apply to modify their licensed or CP facilities in order to better reach their new DTV Table coverage if such was based on a certification that differs from their current license or CP (for example, more than 200 stations staying on their pre-transition DTV channel certified to replication facilities and their currently authorized licenses or CPs are unlikely to exactly match the new DTV Table facilities that are derived from the replication coverage). Stations that already have a license to operate or a CP to construct their post-transition channel that matches their new DTV Table facilities do not need to file any additional CP applications. This group includes those stations discussed in paragraph 17 that will use their currently authorized DTV channel for post-transition operations and that will use facilities that exactly match those defined in the new DTV Table. These stations are building their post-transition facilities on the CPs granted for pre-transition operation. Once they have completed construction, they should file for a license to cover (FCC Form 302) as required by 47 CFR 73.3536. Stations may file an application to modify their authority on their current DTV channel at any time, provided they do not violate the terms of the Commission's filing freeze. (On August 3, 2004, the Media Bureau imposed a freeze on requests for changing DTV channels within the DTV Table and on new DTV channels, as well as on the filing of modification applications by television and Class A television stations, in order to provide a stable database for conducting the channel election process and developing a new DTV Table. The freeze does not prevent the processing of pending applications.) Stations that have a license to operate or a CP to construct the facilities they want to retain for post-transition use should file applications if their licensed facilities or CP do not match the proposed new DTV Table Appendix B unless they have previously filed comments to amend the Table or Appendix B in the *Seventh FNPRM*, MB Docket No. 87–268. (The facilities defined in the proposed new DTV Table were intended to allow stations to serve geographic areas based on licensees' certification forms (FCC Form 381) and, in some cases, on conflict resolution forms (FCC Form 383 and 385). If the DTV facility that a station intends to license for post-transition operation did not match the facilities described in the proposed new DTV Table, but does match the facility in the revised new DTV Table when adopted, the station need not file an application.) Appendix D to the NPRM lists the stations that are ready for post-transition operations and do not need to apply for a CP or modification based on current records. We invite comment on this list and whether there are stations that should be added or deleted.

94. *Filing Requirements.* Commercial stations that need to construct or modify their post-transition facilities must file FCC Form 301 for a minor modification and submit the appropriate fee. (Applications to construct or modify post-transition facilities specified in the new DTV Table involve a minor change in facilities and we will process them accordingly. 47 CFR 73.3572(a)(1) defines a major change in a television station's facilities as any change in frequency or community of license. Several stations may be changing channels as a result of the channel election process; however, these stations will be applying for the frequency and community of license assigned to them in the new DTV Table that will be established in the Report and Order in MB Docket No. 87–268, so we will treat their applications as not involving a change in frequency. We believe this treatment will speed processing. We also note that this is consistent with our implementation of the initial DTV Table in 1998. NCE stations must file FCC Form 340. We propose that stations must limit their applications to those facilities specified in the new DTV Table Appendix B, as adopted. Pursuant to this proposal, applications requesting facilities that would serve a larger area than stations' new DTV Table Appendix B facilities would not be accepted at this time. Because the new DTV Table will have resolved the interference conflicts raised during the channel election process, we believe we would be able to process these applications without having to conduct interference analyses and without having to consider whether any applications are mutually exclusive. We seek comment on this proposal. Specifically, we seek input from any stations that may be unable to build precisely the facilities specified in the new DTV Table Appendix B (for

example, if an antenna producing the exact antenna pattern is not available). If such stations are prohibited from expanding beyond their DTV Table Appendix B facilities (as proposed *infra* in section V.E.), will they instead be required to reduce their facilities so significantly that they will be unable to provide adequate service? If so, should we allow stations that fall into this situation to expand beyond their DTV Table Appendix B facilities to the extent necessary to address the difference between the theoretical facilities specified in the new DTV Table Appendix B and the actual facilities which they are able to build?

95. *Expedited processing.* It is each station's responsibility to ensure that it can begin operations on its post-transition channel upon expiration of the deadline for the transition on February 17, 2009. (We note that some stations may need to complete their facilities significantly before February 17, 2009, because, for example, they will not be able to build during the winter months.) Thus, stations have a great incentive to promptly file their applications as soon as possible in order to have the maximum time to order equipment and build their facilities. Stations also have the responsibility to file their applications in sufficient time before the deadline so that they may be granted by the Commission. In order to provide further incentive for stations to timely file applications for their post-transition facilities, we propose to process expeditiously certain applications, provided they are filed no later than 45 days after the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. Stations whose channel assignments or facilities are not finalized at that time will receive expedited processing if they file their applications no later than the deadline specified in their individual channel resolutions. We believe this application filing deadline of 45 days after the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding will give stations ample time to prepare for these filings and to complete construction prior to the deadline. (The 45-day application deadline will not become effective until OMB approval is obtained for the filing of these applications.) Specifically, we propose to offer expedited processing to stations that timely apply for a CP to build their post-transition channel, provided that their application (i) does not seek to expand the station's facilities beyond its new DTV Table Appendix B facilities; and (ii) specifies facilities that match or closely approximate those new DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that deviate no more than five percent from those Appendix B facilities with respect to predicted population). We believe we can quickly determine which stations are applying for facilities that do not extend in any direction beyond their DTV Table Appendix B facilities and then expeditiously review those stations' applications without conducting a significant interference analysis because those applications will either match or closely approximate their DTV Table Appendix B facilities. Further, we believe the creation of this process will allow us to grant qualified applications expeditiously, generally within 10 days of filing. We remind stations that expedited processing does not mean they will receive an expeditious grant. (Stations that receive expedited processing are not guaranteed that their application will be granted; the application still must satisfy the criteria on Form 301 (or 340 for NCEs), as revised in this proceeding. Similarly, stations that do not qualify for expedited processing will not necessarily have their applications denied; rather, their applications simply will not be processed on an expedited basis.) Applications that receive expedited review but that are not readily grantable by the Commission will require further action by the station. (In addition to the proposed requirements discussed, an application cannot be granted unless certain other criteria are met. These include certifying that the proposed facility: (1) Will not have a significant environmental impact; (2) will serve the principal community of license; (3) will provide necessary protection to radio astronomy installations and FCC monitoring stations; and (4) has had its tower approved by FAA, if necessary.) We seek comment on this proposal. We also seek comment on alternative methods to streamline the application process.

96. *Revisions to FCC Form 301 and 340.* To accommodate filings related to stations' post-transition facilities, we propose to modify the FCC Forms 301 and 340, as attached. The form changes will allow stations to indicate that they are applying for post-transition facilities. They also will facilitate the expedited processing discussed above. We seek comment on our proposed forms and if additional changes to the forms are needed.

97. *Program tests/License to Cover CP.* Stations must not commence program tests on their post-transition channels until they are ready to begin post-transition operations under program test authority. Stations that want to conduct program tests on their post-transition facilities must comply with the Commission's rules and coordinate with any affected stations when they do the testing. Each station is responsible for determining which other stations may be affected and coordinating accordingly. We expect that stations will work together cooperatively to facilitate testing. Upon completion of the construction of a television facility as authorized by a CP, a station may commence program tests upon notification to the Commission, provided that an application for a license to cover the CP for the post-transition facility, on FCC Form 302, is filed within 10 days, along with the appropriate fee. (Stations must comply with the terms of their CP as well as the technical provisions of the application, or rules and regulations, and the applicable engineering standards. We remind stations that will be using Channel 14 for post-transition operations that they must take special precautions to avoid interference to adjacent spectrum land mobile radio service facilities before commencing program testing. Where a TV station is authorized and operating prior to the authorization and operation of the land mobile facility, a Channel 14 station must attenuate its emissions within the frequency range 467 to 470 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees.) We do not believe any rule changes are necessary here.

E. Expanding Facilities

98. During the channel election process, stations defined their post-transition facilities, deciding whether they would (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility. Stations, however, were not allowed to seek facilities that would expand their coverage areas beyond that authorized by a license, CP or STA. This was precluded by the Commission's freeze on the filing of maximization applications in order to provide a stable database for developing the new DTV Table.

99. We recognize that stations may want to apply to expand their facilities to serve a larger area than defined in the new DTV Table Appendix B, as adopted. Stations' new channel assignments may present them with new opportunities to offer expanded DTV coverage, either because the

stations may be moving to a new channel that does not have the same interference restrictions or because other stations on adjacent channels may be moving away, thus eliminating prior interference conflicts. It may save some stations time and money if they are able to file only one application for expanded facilities.

100. We believe, however, that we must first ensure that all stations can at least provide digital service to their analog viewers by the transition date before considering new maximization applications. We thus tentatively decide not to allow stations to apply for expanded facilities at this time. We propose to consider the issue of expanded facilities after all stations have had an opportunity to apply for their facilities as specified in the new DTV Table Appendix B. We seek comment on this approach and on our tentative conclusions. We also invite comment on ways in which stations could seek expanded facilities at this time without delaying the transition or overburdening the scarce resources needed by other stations to transition.

F. Interference Standards

101. Although we have proposed, above, not to allow stations to apply to maximize their facilities at the same time that we will be accepting applications for construction permits for the new DTV Table Appendix B facilities, we do intend to allow stations to apply for maximization once it is appropriate to do so. At that point, we will need to have our post-transition interference standards in place. In addition, it is our understanding that knowing what those post-transition interference standards will be in advance may enable stations to anticipate future equipment needs and allow them to minimize their capital expenditures by buying equipment that can be used both now and in the future. (We cannot provide any guarantees regarding whether and/or to what extent any particular broadcaster may be able to expand their facilities in the future.) Accordingly, we believe it is appropriate at this time to propose what those post-transition interference standards will be. In this section, we consider interference protection methodologies and requirements for application processing, as well as for rulemaking petitions to add a new DTV allotment or change the channel of an existing allotment.

102. In adopting the initial DTV Table in the *1997 Sixth Report and Order,* the Commission concluded that it would apply geographic spacing standards in determining whether to permit the addition of DTV allotments in the Table. (47 CFR 73.623(d) specifies the minimum geographic spacing requirements for DTV allotments not included in the initial DTV Table. 47 CFR 73.623(c) sets forth the criteria for applications to modify assignments in the initial DTV Table, including the thresholds of desired-to-undesired (D/U) ratios at which interference is considered to occur. 47 CFR 73.622(e) defines a DTV station's service area as the geographic area within the stations' noise-limited F(50,90) contour where its signal is predicted to exceed the noise-limited service level. The F(50,90) designator indicates that a specified field strength necessary for the provision of DTV service is expected to be available at 50 percent of the locations 90 percent of the time. A station's noise-limited contour is computed using its actual transmitter location, ERP, antenna HAAT, and antenna radiation pattern.) The Commission noted that geographic spacing provides a clear and simple measure of acceptability of an allotment proposal without the need to engage in extensive analysis of interference and has been used successfully in the television service for many years. (The Commission considered but ultimately rejected an alternative approach whereby a party requesting an addition to, or modification of, the DTV Table would be required to show that a station operating at the maximum permissible ERP and antenna height on the proposed allotment would not exceed the engineering interference criteria with regard to any other existing allotment.) The Commission recognized, however, that engineering criteria may allow more efficient use of the spectrum and stated it would revisit the allotment criteria at an appropriate point later in the DTV transition process. The Commission also determined in the *Sixth Report and Order* that a party applying for a modification of the DTV Table would need to show that its proposed modification would not result in any new predicted interference to other DTV allotments or existing NTSC stations, based on the engineering technical criteria used to develop the initial DTV Table. On reconsideration, the Commission replaced this no new interference standard with a *de minimis* standard pursuant to which stations may make changes in their operation where the requested change would not result in more than a 2.0 percent increase in interference to the population served by another TV or DTV broadcast station, and provided that the protected station is not, or will not be, receiving interference in excess of 10 percent of its population from all combined interfering stations. This *de minimis* standard for permissible new interference was adopted to provide flexibility for broadcasters in the implementation of DTV by allowing additional opportunities for stations to maximize their DTV coverage and/or service by increasing power and/or making other changes in their facilities.

103. The Commission has also relied on other interference standards in the DTV context. For example, applicants seeking facilities modifications of full-service NTSC stations are allowed to cause a 0.5 percent margin above a prediction of no reduction in the population served by a DTV station to account for rounding and calculation tolerances. Applicants for analog TV translator and low power TV (''LPTV'') stations must propose facilities that do not exceed specified threshold D/U ratios at a DTV station's noise-limited contour or at all points within the noise-limited area in the case of adjacent channel stations proposing to locate inside the DTV noise-limited contour. (Similarly, a licensee requesting DTV facilities modifications that would expand its station's service area in any direction must meet D/U protection requirements at the protected contour of Class A TV stations authorized on the same or first adjacent channel. In all cases in which the interference standard is based on signal contour protection, applicants are permitted to base requests to waive the standard on the DTV protection standards and methodology in 47 CFR 73.623(c).) In addition, in the channel election process that led to the proposed new DTV Table for post-transition operation, an interference conflict was determined to exist when it was predicted that more than 0.1 percent new interference would be caused to another station. (New interference was considered to constitute a conflict when the new interference affected more than 0.1 percent of the population predicted to be served by the station in the absence of that new interference. In the *Second DTV Periodic Report and Order,* the Commission permitted the 0.1 percent additional interference limit to be exceeded on a limited basis in order to afford stations with an out-of-core DTV channel to elect to operate its post-transition station on its in-core analog channel.)

1. Proposed Interference Criteria

104. When evaluating applications to construct post-transition facilities, we propose to use an interference protection requirement based on

engineering criteria (e.g., permissible interference) rather than a geographic spacing requirement. We believe this will allow for a more flexible design of proposed stations while offering a high level of protection to existing authorized service. By their nature, geographic spacing requirements do not take into account intervening terrain features (or the lack of such features). Stations separated by the same distance may create significant mutual interference in areas of flat terrain while no interference is predicted in circumstances where intervening terrain limits the signals from either or both stations. Where authorized DTV stations wish to change their assigned DTV channel through a rulemaking petition, we also believe applying the proposed engineering criteria is appropriate. On the other hand, we continue to believe that geographic spacing requirements represent a preferred approach for evaluating a petition for rulemaking requesting a new DTV allotment. In such new allotment cases, information about actual transmitter site locations and facilities are generally not available. We propose to apply an engineering criteria approach in all cases involving applications and to use geographic spacing requirements only for rulemaking petitions seeking new DTV channel allotments. We seek comment on these proposals and tentative conclusions, as well as on alternative methods of providing interference protection.

105. Our proposed engineering criteria to evaluate all post-transition applications would limit the predicted interference that a station may cause to 0.5 percent of the protected station's service population. This proposed 0.5 percent interference standard is stricter than the 2 percent/10 percent criteria that has applied since early in the DTV transition. The 2 percent/10 percent rules were established in order to accomplish the difficult task of accommodating every existing TV station with a second channel for DTV operation within the spectrum already allocated for TV broadcasting and heavily used in some areas. As indicated above, the Commission initially adopted a stricter ''no interference'' standard, but on reconsideration recognized that stations would need flexibility as they attempted to implement their second channels in this congested spectrum environment. The flexibility provided under the 2 percent/10 percent standard allowed many stations to propose increased coverage, helping to provide DTV signals to more viewers early in the transition.

106. In addition, we note that our 0.5 percent proposal is not as strict as the 0.1 percent new interference criterion that was employed for determining interference conflicts in the channel election process.

107. Our proposed requirement that interference from a DTV application for post-transition use not exceed 0.5 percent is the same requirement as we have used during the transition for analog TV stations protecting DTV stations. It can be viewed as a ''no new interference'' criteria when the amount of predicted interference is rounded to the nearest whole percent (*i.e.*, any determination of less than 0.5 percent interference would be considered to be 0 percent, while an interference determination greater than 0.5 percent would round up to 1.0 percent.) This level of rounding is more reflective of the accuracy of the interference prediction model than the 0.1 percent criterion. (The 0.5 percent allowable predicted interference level is also used for Class A TV stations protecting DTV stations pursuant to 47 CFR 73.6013 and for determination of LPTV and TV translator protection of full service DTV.)

108. Because our proposed 0.5 percent interference limit is significantly less than the 2 percent limit that we now use, we do not believe it is necessary to continue to impose the 10 percent cap on total interference from all sources. (In the initial DTV Table, the Commission necessarily exceeded the 10 percent limit with respect to a significant number of stations. In contrast to the initial Table, the new Table will not be as congested because stations will be returning one of their paired channels.) The new DTV Table has fewer stations than the initial Table that exceed the 10 percent limit and many of those stations elected their proposed channel knowing that the amount of interference would exceed that amount. In lieu of the 10 percent component of the current standard, we propose to limit the total interference any station would receive from all sources by requiring that stations already predicted to cause more than 0.5 percent interference to another station will not be allowed to increase the interference they are authorized to cause. (For example, an application would not be granted for a station that is authorized to cause 1.8 percent predicted interference if the facilities proposed in the application are predicted to raise the amount of interference caused to 1.9 percent.)

109. We seek comment on our proposals to limit permissible interference to 0.5 percent and to not allow any increase in situations where the amount of interference currently caused exceeds 0.5 percent, as well as on any other methods to limit total interference. Does 0.5 percent reflect the right balance between protecting established DTV service and affording adequate flexibility to stations seeking to establish post-transition operations? Would another amount be more appropriate?

110. We propose to evaluate compliance with the 0.5 percent standard using the Office of Engineering and Technology's OET Bulletin No. 69 (''OET 69'') methodology, but using 2000 census data as was done during the channel election process. (The more up-to-date population data from the year 2000 census was used to provide a more accurate indication of the station service and impacts of interference on that service than the older year 1990 population data used in computing the service data for the initial DTV Table.) We seek comment on whether other changes to the OET 69 methodology are necessary here. For example, the standard OET 69 analysis evaluates ''cells'' within a station's coverage area which are squares 2 kilometers on a side. We have generally allowed applicants to specify analysis based on cells that are smaller because such analysis is arguably more accurate. As a result, we understand that some applications have been based on evaluating many possible smaller cell sizes until the desired result is obtained. (For example, if an application would fail based on 1.0 km cells but passes based on 1.5 km cells, the applicant would request evaluation based on the 1.5 km cell size.) Such ''shopping'' for advantageous cell sizes does not improve the accuracy of the evaluation. Should standards for allowable smaller cell sizes be established (for example only allowing 1.0 km or 0.5 km cell sizes to be requested)?

111. We also note that, in other proceedings, we have received comments that it may be useful to adopt variable D/U ratios for adjacent channel interference depending upon the received signal levels predicted for the desired signals because the D/U interference ratios employed for upper and lower first-adjacent channels are based on test results for weak desired signal strengths and may produce inaccurate predictions where the interfering station is located in an area that receives a strong desired signal strength. Thus, we seek comment on whether a change should be adopted to

reflect this concern in situations where adjacent-channel transmitters are proposed to be located inside a desired station's noise-limited service contour. (Such situations may become more prevalent if rules are adopted allowing distributed transmission systems (''DTS'').)

112. For new DTV allotments, we propose to continue to use the DTV-to-DTV geographic separation requirements contained in Section 73.623(d) of the rules. We note that these distances were developed to be analogous to the long-standing analog TV geographic spacing rules. We intend that our consideration of petitions for rule making requesting new DTV allotments will be consistent with the process we have used for analog TV allotments in that short-spacing waivers will not be allowed. However, as with analog spacing distances, the DTV spacing distances allow regular occasions of predicted interference to occur. After a new DTV allotment has been approved, we propose to regulate the extent of this interference by requiring applications for these DTV allotments to comply with the same engineering criteria standards we are proposing for all other DTV applications. This method of allowing flexibility for applicants seeking a new DTV allotment while protecting existing DTV stations' service is consistent with our analog TV application practice of considering applications that require a waiver of the geographic spacing requirements. We seek comment on this proposal, as well as on alternative methods for evaluating requests for new DTV allotments.

113. Going forward, we propose to protect each station's new DTV Table Appendix B facilities' coverage only until it has a CP or license for its post-transition operation, at which time we will limit its interference protection to its authorized coverage area. We recognize, however, that we are proposing to require that stations initially apply for facilities that do not expand their certified coverage and some stations would need to specify facilities that create a predicted service contour that is smaller in some directions than their certified coverage contour in order to comply with that proposal. When the filing freeze is lifted, we expect many such stations will file maximization applications. To avoid penalizing stations in such a situation, we propose to temporarily continue to require that other stations' maximization applications protect the new DTV Table Appendix B facilities of stations, even though most stations should have a CP or license at that time. At an appropriate time, the Media Bureau would announce the change to limit the required protection to CPs and licenses for stations that have such authorizations. We seek comment on this proposal.

2. Pre-Transitional Operations

114. We continue to process applications for analog and DTV new stations, and changes to existing or authorized stations that comply with the freeze. With respect to these applications for pre-transition operation, we intend to continue using the current interference protection rules. We seek comment on this conclusion. In particular, the current requirements provide that an application for a new or modified analog TV station must not cause more than 0.5 percent interference to any authorized DTV station or allotment. Such an analog TV application must protect other analog TV stations by meeting the distance spacing requirements. An application for a new or modified DTV station must not cause more than 2.0 percent interference to any authorized analog TV station, DTV station or DTV allotment. Such DTV applications also must not cause the total cumulative interference received by any protected station to exceed 10.0 percent. (DTV applications also must protect Class A TV stations as provided in 47 CFR 73.623(c)(5) and stations in the land mobile radio service pursuant to 47 CFR 73.623(e).) Calculations of predicted interference percentages will continue to be based on the standard OET 69 methodology, including use of 1990 Census data. (Although new population data is available, we believe it is appropriate to continue to use the 1990 census data for the predicting the populations to be served by the remaining analog and new digital television stations to be processed during the transition and the interference those stations would cause to other stations. The predictions of population served and interference received used in developing initial DTV transition assignments in 1998 were based on the 1990 census and that population base has been relied on subsequently in processing of applications for analog and DTV modifications and new stations. Our continued use of the 1990 census data for processing the few remaining transition applications will provide for treatment of these applications on the same basis as other stations during the transition. We also do not believe that the differences in population patterns between the 1990 and 2000 census are of sufficient significance for TV service purposes in the short remaining time of the transition as to warrant recomputation of the service and interference predictions for all analog and DTV stations operating during the transition.) The current database of authorized or applied for stations would also continue to be used.

G. Other Issues

1. DTV Transmission Standard (ATSC A/53)

115. In the *Second DTV Periodic Report and Order,* the Commission revised its DTV transmission standard, contained in Section 73.682(d) of the rules, to specify the use of the August 7, 2001 Advanced Television Systems Committee (''ATSC'') DTV transmission standard A/53 Revision B with Amendment 1 and Amendment 2 (''A/53–B''). The Commission also stated that it would continue to encourage further improvements to the DTV standards and conduct additional rulemakings as appropriate to incorporate future updates of the ATSC DTV transmission standard into the Commission's rules. We propose to update Section 73.682(d) to reflect revisions to the ATSC DTV transmission standard A/53–B since the *Second DTV Periodic Report and Order.* We seek comment on this proposal.

116. Since Section 73.682(d) was revised in the *Second DTV Periodic Report and Order,* ATSC has continued to update the ATSC DTV transmission standard; the current version is A/53 Revision E, with Amendments No. 1 and 2 (''A/53–E''). A/53–E differs from A/53–B in several respects. First, A/53–E offers several improvements over A/53–B, including the specifications for Enhanced 8–VSB (''E8–VSB'') for terrestrial broadcast. E8–VSB enables Enhanced Services, which allow broadcasters to allocate the base 19.39 Mbps data rate between Main Service data and Enhanced Services data. Enhanced Services data is designed to have higher immunity to certain channel impairments than Main Service data, but Enhanced Services data is delivered at a reduced information rate selected by the broadcaster from the specified options. A/53–E further describes the coding constraints that apply to the use of the MPEG–2 systems specification in the DTV system, including mandatory main and optional enhanced services. It also improves the Active Format Description (''AFD'') specifications by revising and clarifying the relevant standards. In light of these advantages, we believe that updating the Commission's rules to specify A/53–E will benefit both broadcasters and

consumers by allowing broadcasters the flexibility to offer new technological services. We seek comment on this tentative conclusion.

117. In the *Second DTV Periodic Report and Order,* the Commission declined to mandate that broadcasters use the AFD when the active video portion picture does not completely fill the coded picture. The Commission stated that the revisions in the new standard were developed through careful consideration and deliberation within the technical committees of ATSC and thus reflected a consensus agreement based on the input of parties from various segments of the industry. As a result, broadcasters were given the option to use AFD, but if a station included AFD data it had to follow the ATSC standard. The Commission noted, however, that as more consumers acquired widescreen aspect ratio sets, the problem of ''postage stamp video'' would become more prevalent if not addressed by broadcasters. At the time, the Commission believed that broadcasters would want to make their programming attractive to viewers as they begin to adopt DTV. A coordinated effort on clarifying AFD and bar data standards between ATSC, CEA and the Society of Motion Picture and Television Engineers (''SMPTE'') resulted in a CEA recommended practice (CEA–CEB16) titled ''Active Format Description (AFD) & Bar Data Recommended Practice,'' and a proposed SMPTE 2016–1 standard for television—Format for Active Format Description and Bar Data. These efforts were designed to encourage the use of AFD by broadcasters. We thus seek comment on whether these voluntary, industry driven efforts are sufficient, or if, instead, we should require broadcasters to provide AFD and bar data. If we do impose such a requirement, should broadcasters be required to provide AFD data for all programming broadcast, regardless of its source? Should such a requirement extend to live programming (*e.g.*, sports and other events where a combination of SD and HD equipment may be used)? Assuming that we did require the inclusion of AFD, what effect would the imposition of such a requirement have on small broadcasters? We seek comment on these issues.

2. Program System and Information Protocol (''PSIP'') Standard

118. In the *Second DTV Periodic Report and Order,* the Commission revised Section 73.682(d) to require the use of the ATSC Program System and Information Protocol (''PSIP'') standard A/65–B. PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast. PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the ''major'' channel number), thereby making it easy for viewers to tune to the station's DTV channel even if they only know the station's major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers.

119. Since Section 73.682(d) was revised in the *Second DTV Periodic Report and Order,* ATSC has updated the ATSC PSIP standard; the current version is A/65–C. This new revision further enhances the PSIP standard and support for delivery of data. The updated ATSC PSIP standard now requires broadcasters to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available. Currently, under version A/65–B, many broadcasters provide only general information in the EIT tables. For example, a network affiliate may provide ''network programming'' as the descriptor for the majority of its program offerings. We propose to update Section 73.682(d) to reflect these revisions to the ATSC PSIP standard since the *Second DTV Periodic Report and Order.* We seek comment on this proposal. In particular, we request input regarding the burden that compliance with A/65–C would place on broadcasters—especially small broadcasters.

120. We also seek comment from broadcasters and others as to the need to include more accurate, detailed, and up-to-date information about each event under this new PSIP standard. We also seek comment about whether PSIP information is being passed through to cable and satellite subscribers. If satellite carriers are not passing through PSIP information, is the information otherwise being reflected adequately in the electronic program guide and signal they provide to subscribers?

3. Fees for Ancillary and Supplementary Services

121. In this section, we seek comment on Section 73.624(g) of the Commission's rules, which requires DTV licensees to report whether they have provided ancillary and supplementary services and to pay a fee of five percent of gross revenues derived from certain of those services. As currently written, this rule refers to the payment of such fees by ''DTV licensees.'' We seek comment on whether the Commission can and should revise its rules to require that all DTV broadcasters, including permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions, that earn revenue from feeable ancillary and supplementary services, are subject to the provisions of Section 73.624(g).

4. Station Identification

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

123. A station choosing to include its channel number in its station identification must use the major (analog) channel number. (Thus, a broadcaster who operates an NTSC service on channel ''26'' and a DTV service on channel ''27'' would use the major channel ''26'' in station identification announcements.) The Commission adopted the ATSC A/65B standard and noted that PSIP, which is part of that standard, allows viewers to see a broadcaster's major channel number regardless of the broadcaster's allocated digital broadcast channel. (This allows broadcasters to keep their existing channel number in the digital world, thereby assisting viewers who have come to identify these numbers with particular broadcasters and preserving the investment broadcasters have made in marketing these numbers.) The Commission permitted stations choosing to multicast to include additional information in their station

announcements identifying each program stream. (Thus, a station with major channel number 26 might have channel 26.0 (NTSC program stream), channel 26.1 (HDTV), and 26.2 (SDTV). Stations may provide information in the station announcement identifying the network affiliation of the program service (e.g., ''WXXX–DT, channel 26.1, YYY (community of license), your CW network channel''). Stations simulcasting their analog programming on their digital channel are permitted to make station identification announcements simultaneously for both stations as long as the identification includes both call signs (e.g., ''WXXX–TV and WXXX–DT'') if it is intended to serve as the identification for both program streams. Stations simulcasting the analog stream on the digital channel may also do a shortened identification for both streams (e.g., ''WXXX–TV/DT''). The Commission's rules require that the station that is transmitting the multicast stream is the station whose identification must appear on the program stream. (Thus, if station WXXX–DT is transmitting programming provided by WYYY–TV or WYYY–LP on one of WXXX–DT's multicast streams, the identification on that stream must be the frequency and location of WXXX–DT.)

124. Now that stations have some experience in applying these station identification rules to digital stations, we invite comment on whether these rules provide sufficient clarity to broadcasters and viewers. We specifically invite comment on whether the current rules provide for appropriate identification of multicast channels, particularly in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station. As the Commission has previously noted, as stations transition to digital format and provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming viewers are watching becomes increasingly important, both for the viewers and for stations themselves. We invite comment on any and all aspects of the Commission's station identification rules, whether any changes to or clarifications of the rules are appropriate, and, if particular problems implementing the rules have arisen, specific proposals for how the rules should be changed.

5. Coordination With Cable Operators, Satellite Systems and Other MVPD Providers

125. We recognize that the transition to digital television necessarily involves coordination with Multichannel Video Programming Distributors (''MVPDs''). (MVPDs include cable operators and Direct Broadcast Satellite carriers. As of June 2005, approximately 94.2 million TV households, or almost 86 percent of TV households, subscribe to an MVPD service.) Because a majority of television viewers receive their broadcast signals via an MVPD, if these providers have problems receiving and retransmitting digital signals when analog signals are turned off, that could have a significant adverse impact on the digital transition. We seek comment here on the issues specifically related to MVPD readiness to receive and retransmit digital signals to their subscribers when analog service ends on February 17, 2009. (General issues regarding mandatory carriage of digital broadcast signals are being addressed in other dockets.) We also invite comment on what steps, if any, are necessary to allow consumers to continue to receive over-the-air television signals in a variety of settings outside their homes, such as hotels, restaurants, universities and offices.

126. In this regard, we solicit comment from cable operators, satellite carriers, and private cable operators (also known as Satellite Master Antenna Television or ''SMATV'' providers) regarding steps they are taking to ensure that their subscribers will continue to receive local broadcast stations after the termination of over-the-air analog broadcast signals from full power stations. Moreover, we request comment on whether and what type of coordination is needed between broadcast television stations and MVPDs to facilitate a timely and smooth transition, whether this coordination is underway, and what actions the Commission could take to facilitate that coordination. For example, will cable and satellite operators have technical difficulties receiving digital signals from local television stations on new channels (and in some cases from different transmission facilities)? Are changes needed at cable and SMATV headends and satellite local receive facilities to receive these signals? Have MVPDs experienced difficulties receiving and retransmitting local digital broadcast signals thus far? Will MVPDs be able to handle all the various channel changes and other modifications that will be necessary, many of which will occur at midnight on February 17, 2009? Do MVPDs need to test reception and retransmission capabilities in advance of the transition, and, if so, when, and how, in light of construction deadlines?

VI. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

127. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (''NPRM'')*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for and Objectives of the Proposed Rules

128. This *NPRM* begins the Commission's third periodic review of the transition of the nation's broadcast television system from analog to digital television (''DTV''). The Commission conducts these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. In 2005, Congress mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.

129. The purpose of this *NPRM*, generally, is to (1) provide a progress report on the DTV transition; (2) describe the status and readiness of existing stations to complete the transition; (3) consider and propose the procedures and rule changes necessary to complete the transition; and (4) address other issues related to the transition. In particular, the *NPRM* proposes (1) rules for applying to construct final, DTV facilities and (2) construction deadlines for the completion of final, DTV facilities.

130. The primary objectives of this *NPRM* is to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) have

completed construction and begun operating their final, DTV facilities. In addition, the *NPRM* considers proposals to provide broadcasters with the regulatory flexibility necessary to meet these goals.

B. Legal Basis

131. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

132. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

133. We believe that full-power television broadcast stations will be directly and primarily affected by the proposed rules, if adopted. Although the proposed rules will not apply to Class A TV stations, low power television (LPTV) stations, and TV translator stations, it is still possible that these entities may be affected by the proposed rules. For example, the proposed rules, if adopted, would permit applications for analog translators to be filed under specific circumstances and in that way may affect TV translator stations. Otherwise, we do not believe any other types of entities will be directly affected by the proposed rules; however, request comment on this tentative conclusion. A description of the small entities that may be directly affected, as well as an estimate of the number of such small entities, is provided below.

Entities Directly Affected by Proposed Rules

134. *Television Broadcasting.* The proposed rules and policies apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $13.5 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,376. According to Commission staff review of the BIA Financial Network, MAPro Television Database (''BIA'') on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or about 72 percent) have revenues of $13.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

135. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

136. *Class A TV, LPTV, and TV translator stations.* The proposed rules and policies may also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.5 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13.5 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

Entities That May Be Indirectly Affected by Proposed Rules

137. Because the rules proposed in this *NPRM* pertain to the transition from analog to digital broadcasting of full-power television broadcast stations, we do not believe the rules proposed will directly affect any other entities. We seek comment on this tentative conclusion. Certain entities may believe they would be affected by the proposed rules. For example, the proposed rules may, in the opinion of cable operators, satellite carriers other multichannel video programming distributors (''MVPDs''), indirectly affect these entities. In addition, the proposed rules may indirectly affect electronics equipment manufacturers. Although such comment is not required by the RFA, we invite comment from any small cable operators, small satellite carriers or other small MVPDs, as well as from small equipment manufacturers, who believe they might be directly affected by our proposed rules contained in the *NPRM.*

138. *Cable and Other Program Distribution.* Cable system operators fall within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in revenue annually. According to the Census Bureau data for 1997, there were a total of 1,311 firms that operated for the entire year in the category of Cable and Other Program Distribution. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or

more, but less than $25 million. In addition, limited preliminary census data for 2002 indicates that the total number of Cable and Other Program Distribution entities increased approximately 46 percent between 1997 and 2002. The Commission estimates that the majority of providers in this category of Cable and Other Program Distribution are small businesses.

139. *Cable System Operators (Rate Regulation Standard).* The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

140. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67.7 million subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act.

141. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with $13.5 million or less in annual receipts. Currently, only three operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All three currently offer subscription services. Two of these three DBS operators, DirecTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion Video Satellite, Inc. (''Dominion''), offers religious (Christian) programming and does not report its annual receipts. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

142. *Private Cable Operators (''PCOs''), also known as, Satellite Master Antenna Television (''SMATV'') Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $13.5 million or less in annual receipts. Currently, there are more than 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately one million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCO qualify as small entities.

143. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, as of June 2005, there were 206,358 households authorized to receive HSD service. The Commission has no information regarding the annual revenue of the four C-Band distributors.

144. *Wireless Cable Systems.* Wireless cable systems use the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), frequencies in the 2 GHz band to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.

We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Id. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As previously noted, the SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to MDS, ITFS and LMDS.

145. *Wireless Cable Systems (Commission Auction Standard).* The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, we estimate that there are approximately 850 small MDS (or BRS) providers as defined by the SBA and the Commission's auction rules.

146. Educational institutions are included in this analysis as small entities; however, the Commission has not defined a small business size standard for ITFS (now EBS). We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

147. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

148. *Open Video Systems (''OVS'').* In 1996, Congress established the open video system (''OVS'') framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (''LECs''). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (''RCN''), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

149. *Electronics Equipment Manufacturers.* The rules adopted in this proceeding may indirectly affect manufacturers of digital receiving equipment and other types of consumer electronics equipment. The appropriate small business size standard is that which the SBA has established for manufacturers of radio and television broadcasting and wireless communications equipment. This category encompasses entities that primarily manufacture radio, television, and wireless communications equipment. Under this standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 2002 indicate that, for that year, there were a total of 1,041 establishments in this category. Of those, 1,023 had employment under 1,000. Given the above, the Commission estimates that the great majority of equipment manufacturers are small businesses.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

150. The proposals set forth in this *NPRM*, if adopted, would impose mandatory compliance and reporting requirements on full-power television broadcast stations, including requiring that such stations: (1) Must cease analog broadcasting on or before the February 17, 2009 transition date; (2) if they do not have an existing construction permit for their final, DTV facility, or if they need to modify their existing construction permit, must file an application for a new or modified construction permit for their final, DTV facility; (3) must construct their DTV facility by the construction deadline proposed for them; (4) must file a form with the Commission detailing their current transition status, the additional steps necessary in order to be prepared for digital-only operation on February 17, 2009, and a timeline for making those steps; and (5) must populate, and update as necessary, the Event Information Tables (''EITs'') in PSIP data with accurate information about each event, in accordance with the current version of the ATSC PSIP standard, A/65–C.

151. In addition, certain proposals set forth in this NPRM, if adopted, would provide for voluntary compliance and reporting requirements. Because these voluntary requirements may afford small television broadcast stations the opportunity for regulatory flexibility and reduced burdens, they are discussed in Section E. of this IRFA.

152. *Mandatory Termination of Analog Television Broadcasting.* By statute, after the February 17, 2009 transition date, all full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. This statutory mandate affords the Commission no discretion to offer any regulatory

flexibility to small television broadcasters concerning the mandatory analog turn-off. Rather, to implement this statutory mandate, the Commission must ensure that all full-power television broadcast stations cease analog broadcasting as of the February 17, 2009 transition date.

153. *Applications for New or Modified Construction Permits.* Under the current rules, stations that need to construct or modify DTV facilities must file construction permit or modification applications. Commercial stations must file FCC Form 301 and NCE stations must file FCC Form 340. Stations may file an application to modify their authority on their current DTV channel at any time, provided they do not violate the terms of the Commission's filing freeze.

154. According to the *NPRM*, 634 stations will not be using their currently authorized DTV channel for post-transition operations and will, therefore, need to file an application to construct their final, DTV facility. In addition, if any of the 1,178 stations that will use their currently authorized DTV channel for post-transition operations need to change their DTV facilities, *e.g.*, because if they do not have an authorization for their intended operations, then such stations will need to file a modification application. Thus, both these groups of stations will need to file applications for their final, post-transition facilities.

155. Given the number of stations that will need to file CP or modification applications and the fast-approaching transition date, the *NPRM* proposes to offer expedited processing to a station applying for a CP to build or modify its post-transition channel, provided that its application (i) does not seek to expand the station's noise-limited service contour in any direction beyond that established by the new DTV Table; (ii) specifies facilities that match or closely approximate those new DTV Table facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table, then it must apply for facilities that deviate no more than five percent from those new DTV Table facilities with respect to predicted population); and (iii) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. The NPRM tentatively concludes that it will not accept applications to expand post-transition facilities until it has completed processing the applications to build authorized facilities. The NPRM also tentatively concludes to adopt a new 0.5 percent interference standard to apply to maximization applications and to new channel allotments after the transition.

156. *Construction deadlines for DTV facilities.* The *NPRM* proposes deadlines for all full-power television broadcast stations to complete construction of their final, DTV facilities in order to ensure that DTV stations will be providing service on their final, post-transition channels by the February 17, 2009 transition date. The NPRM proposes construction deadlines based on a station's channel assignment for pre- and post-transition operation, and other circumstances affecting the station's ability to complete final, post-transition facilities. First, the NPRM proposes that February 17, 2009 will be the construction deadline for stations whose DTV channel for pre-transition operation is not the same as their channel for post-transition use. These are stations that will be starting over with a new channel for DTV service. Second, for stations whose post-transition channel is the same as their pre-transition channel, the NPRM proposes to require completion of stations' post-transition facilities by the deadlines established for them in the Construction Deadline Extension Order and Use-or-Lose Order. Most stations (whose post-transition channel is the same as their pre-transition channel) that received a grant of their extension request or use-or-lose waiver request were provided six months from the release date of the Construction Deadline Extension Order or Use-or-Lose Order, whichever is applicable, to complete construction of their final, DTV (post-transition) facilities. The other stations (whose post-transition channel is the same as their pre-transition channel) that received a grant of their extension request or use-or-lose waiver request were provided until February 17, 2009 to complete construction of their final, DTV (post-transition) facilities, because they faced unique technical challenges, such as needing to switch their top-mounted analog transmitter with their side-mounted digital transmitter. Unlike the first group, stations whose post-transition channel is the same as their pre-transition channel have long been assigned the channel that they will use for post-transition operations. Third, notwithstanding the first two groups, the NPRM proposes that February 17, 2009 will be the construction deadline for stations with side-mounted digital antennas or similar situations in which the operation of their analog service prevents the completion of their full, authorized digital facilities.

157. The *NPRM* also proposes to limit the situations in which stations may obtain more time to satisfy the proposed new construction deadlines for completion of final, DTV facilities. For requests for additional time to construct DTV facilities filed before February 17, 2009 (but after the effective date of the proposed new rule), the NPRM proposes to revise and apply Section 73.624(d) of the rules. Specifically, the proposed Section 73.624(d), if adopted, would no longer grant stations additional time to construct because of equipment delays, absent extraordinary circumstances. The proposed rule would also require a stronger demonstration of financial hardship than is now required. The proposed financial hardship standard would require the licensee or permittee of a station to show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. Stations seeking an extension based upon financial considerations under this new test would either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations also would be required to submit a schedule of when they expect to complete construction. As is currently required by the rule, stations making such requests must electronically file FCC Form 337. With respect to a deadline of February 17, 2009 or later, the NPRM proposes to apply Section 73.3598 of the rules, which now applies to DTV singletons, analog TV, and other broadcast services. Stations must file a notification to inform the Commission of the circumstances that it believes should toll its construction period.

158. *Transition Status Form.* The *NPRM* proposes that every full-power television broadcast station must file a form with the Commission that details (1) the current status of the station's digital transition; (2) the additional steps, if any, the station needs to take to be prepared for the switch-over deadline; and (3) a plan for how it intends to meet that deadline. These filings will be posted on the Commission's website. These forms will assist the Commission, industry, and the public in assessing progress and making plans for the digital switchover date. The form will provide information on the status of each station's construction of final, DTV facilities, allowing the Commission, industry, and the public to track the progress of the DTV transition.

159. *Program System and Information Protocol (''PSIP'') standard.* The *NPRM* proposes to update Section 73.682(d) to reflect the revisions to the ATSC

Program System and Information Protocol (''PSIP'') standard since the Second DTV Periodic Report and Order. The current version of the ATSC PSIP standard is A/65–C. PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast. PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the ''major'' channel number), thereby making it easy for viewers to tune to the station's DTV channel even if they only know the station's major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers.

160. This new revision to the ATSC standard further enhances the PSIP standard and support for delivery of data. The updated ATSC PSIP standard now requires broadcasters to populate the EITs with accurate information about each event and to update the EIT if more accurate information becomes available. Currently, many broadcasters provide only general information in the EIT tables. For example, a network affiliate may provide ''network programming'' as the descriptor for the majority of its program offerings.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

161. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

162. As previously noted, the Commission has no discretion to offer any regulatory flexibility to small television broadcasters concerning the mandatory analog turn-off on the February 17, 2009 transition date. Rather, to implement this statutory mandate, the Commission must ensure that all full-power television broadcast stations, including small stations, cease analog broadcasting as of the February 17, 2009 transition date.

163. The *NPRM*, however, does propose opportunities for regulatory flexibility with respect to the other mandatory compliance requirements.

164. With respect to applications for post-transition facilities, the *NPRM* proposes to offer expedited processing (as discussed above). It is each station's responsibility to ensure that it can begin operations on its post-transition channel no later than the deadline for the transition on February 17, 2009. Stations also have the responsibility to file their applications in sufficient time before the deadline so that they may be granted by the Commission. This option may well benefit smaller entities.

165. With respect to the proposed construction deadlines to build final, post-transition facilities, the *NPRM* proposes to offer a variety of opportunities for regulatory flexibility if it would facilitate the transition and ensure that all full-power stations meet the February 17, 2009 transition date.

166. While proposing to establish a stricter standard for requests for extension of time to construct DTV facilities, the *NPRM* also proposes to eliminate the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel. This will help many small stations facing financial challenges to complete construction of DTV facilities while also ensuring that broadcasters continue to focus on the timely construction of the facilities necessary to transition away from analog transmission by the transition date. The *NPRM* also asks whether it should afford small television broadcasters additional time to construct DTV facilities. The *NPRM* also proposes to allow stations to operate on newly allotted post-transition facilities before the transition deadline provided they would not interfere with existing, pre-transition service.

167. The *NPRM* also requests comment on whether to permit stations to build less than their full, authorized post-transition facilities by the relevant construction deadline, provided these stations at least serve the same area and population that receive their current analog TV and DTV service so that over-the-air viewers will not lose TV service. In particular, if such relief is not afforded to all stations, the *NPRM* asks whether to afford such relief to small television broadcasters because of the unique challenges they may face in completing their transition.

168. The *NPRM* requests comment on whether to allow stations to temporarily remain on their pre-transition DTV channel (even though it is not their post-transition channel) if: (i) They serve at least the same area and population that receives their current analog TV service so that over-the-air viewers will not lose TV service; (ii) they do not cause impermissible interference to other stations or prevent other stations from making their transition; and (iii) doing so would facilitate the transition. Stations making such requests would do so in accordance with the rules for STA. This opportunity may afford additional regulatory relief to small television broadcasters.

169. To facilitate the construction of, and commencement of operations on, post-transition facilities, the *NPRM* also examines the circumstances in which a station may reduce or terminate its analog service to facilitate construction of post-transition facilities. This opportunity may afford additional regulatory relief to small television broadcasters. The *NPRM* also considers whether and, if so, under what circumstances it should accept new requests by stations to return their pre-transition-only DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) before the end of the transition and ''flash cut'' from their analog channel to their post-transition channel. This flash-cut option may provide financial relief to small stations, such as satellite stations, by freeing stations to focus their efforts on completion of their final, post-transition facilities.

170. With respect to the proposed updating of Section 73.682(d) to reflect the new revisions to the ATSC PSIP standard, the *NPRM* seeks comment on the burden that compliance with the new standard, A/65–C, would place on small broadcasters, in particular.

171. Consistent with the statutory mandate for full-power TV broadcast stations to cease analog broadcasting by February 17, 2009, as well as with broadcasters' obligation to provide and maintain the best possible TV service to the public, broadcasters are encouraged to suggest alternative proposals that would avoid the imposition of significant and unreasonable burdens on small TV broadcasters.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

172. None.

Initial Paperwork Reduction Act of 1995 Analysis

173. This *NPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), and contains proposed new and modified information collection requirements, including the following proposals: (1) Applications detailing stations' plans for completing their transitions; (2) Applications to construct or modify post-transition facilities (using FCC Forms 301 and 340); (3) Requests to reduce analog TV service; (4) Requests to terminate analog TV service; (5) Requests to flash cut; (6) Requests for STA to use analog translators to offset loss of analog service; (7) Requests for extension of time to construct (using FCC Form 337), or to toll the construction deadline for, DTV facilities; (8) Requests to transition early to their post-transition channel; (9) Requests for STA to temporarily remain on their in-core pre-transition DTV channel; (10) Requests for STA to build less than full, authorized post-transition facilities by the deadline; (11) Applications for a license to cover post-transition facilities (using FCC Form 302 DTV); and (12) PSIP requirement to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the proposed information collection requirements contained in this NPRM, as required by the PRA.

174. Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before September 7, 2007. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

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

B. Ex Parte Rules

176. *Permit-But-Disclose.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

C. Filing Requirements

177. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (''ECFS''), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

178. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

179. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

180. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

181. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

VII. Ordering Clauses

182. Accordingly, *It is ordered* that pursuant to Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 that notice is hereby given of the proposals and tentative conclusions described in this *Notice of Proposed Rulemaking*, including the proposed amendments to Part 73 of the Commission's rules.

183. *It is further ordered* that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Digital television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

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

§ 73.616 Post-transition DTV station interference protection.

(a) A petition to add a new channel to the post-transition DTV Table of Allotments contained in § 73.622(i) of this subpart will not be accepted unless it meets: the DTV-to-DTV geographic spacing requirements of § 73.623(d)(2) with respect to all existing DTV allotments in the post-transition DTV Table; the principle community coverage requirements of § 73.625(a); the Class A TV and digital Class A TV protection requirements in paragraph (d) of this section; the land mobile protection requirements of § 73.623(e); and the FM radio protection requirement of § 73.623(f). The reference coordinates of a post-transition DTV allotment shall be the authorized transmitter site, or, where such a transmitter site is not available for use as a reference point, the coordinates as designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(b) An application for a new post-transition DTV broadcast station or for changes in an authorized post-transition DTV station will not be accepted for filing unless it protects all land mobile operation on channels 14–20 in accordance with § 73.623(e) and all other post-transition DTV stations from interference in excess of the limits established in this section. An application must not cause interference to more than: the greater of either 0.5 percent the population served by the other station or the amount of interference already predicted to be caused by the applicant's authorized facilities.

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

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

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

$$D/U = 15+10\log10[1.0/(1.0–10\text{-}x/10)]$$

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

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

(iii) For interference from a upper first-adjacent channel, the D/U ratio is -26 dB.

(c) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in this section shall not be applicable to these pairs of channels (see § 73.603(a)).

(d) A petition to add a new channel to the post-transition DTV Table or a post-transition DTV station application that proposes to expand its allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A TV station or to a digital Class A TV station authorized pursuant to subpart J of this part, within the protected contour defined in § 73.6010 of this part.

(1) Interference is predicted to occur if the ratio in dB of the field strength of a Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios for ''DTV-into-analog TV'' specified in § 73.623(c)(2).

(2) Interference is predicted to occur if the ratio in dB of the field strength of a digital Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios specified in paragraph (b)(2) of this section.

(3) In support of a request for waiver of the interference protection requirements of this section, an applicant for a post-transition DTV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice methodology is provided in OET Bulletin No. 69, which is available through the Internet at *http://www.fcc.gov/oet/info/documents/bulletins/#69.*

Note to § 73.616: When this rule was adopted, the filing freeze announced in an August 2004 public notice (19 FCC Rcd 14810 (MB 2004)) remained in effect. For a short period of time after the filing freeze is lifted, until a date to be announced by a Media Bureau Public Notice, applicants must protect Appendix B facilities in addition to any authorized facilities required to be protected pursuant to this rule section.

2. Amend § 73.623 by adding a note to paragraph (a) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

(a) * * *

* * * * *

Note to paragraph (a): Petitions for rule making and applications seeking facilities that will operate after the end of the DTV transition must also comply with § 73.616.

3. Amend § 73.624 by adding paragraph (d)(1)(v) and revising paragraph (d)(3) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(d) * * *

(v) February 17, 2009 is the deadline for the completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations whose post-transition digital channel is different from their pre-transition digital channel. For purposes of this construction deadline, the post-transition facilities to be constructed are those defined by the new DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87–268 and codified at 47 CFR 73.622(i).

* * * * *

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

(ii) Such circumstances may include, but shall not be limited to:

(A) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; or

(B) Where the licensee or permittee is currently the subject of a bankruptcy or receivership proceeding, or is experiencing severe financial hardship as defined by negative cash flow for the past three years.

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

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

* * * * *

4. Revise § 73.682(d) to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(d) Digital broadcast television transmission standard. Effective November 6, 2007, transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: ''ATSC Standard Digital Audio Compression (AC–3)'' (incorporated by reference, see § 73.8000), ATSC Doc. A/53, Revision E with Amendment 1 and Amendment 2: ''ATSC Digital Television Standard,'' (September 13, 2006) except for Section 5.1.2 (''Compression format constraints'') of Annex A (''Video Systems Characteristics'') and the phrase ''see Table A3'' in Section 5.1.1. Table A2 and Section 5.1.3 Table A4 (incorporated by reference, see § 73.8000), and ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,'' (Revision C with Amendment 1) May 9, 2006 (incorporated by reference, see § 73.8000). Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Recommended Practice, Guide to Use of the ATSC Digital Television Standard, including Corrigendum No. 1 (December 4, 2003, Corrigendum No. 1 December 20, 2006), and ATSC Doc. A/69, Recommended Practice PSIP Implementation Guidelines for Broadcasters (June 25, 2002) (Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303)).

5. Revise § 73.8000(b)(2) and (3) to read as follows:

§ 73.8000 Incorporation by reference.

* * * * *

(b) * * *

(2) ATSC A/53: ''ATSC Digital Television Standard,'' dated August 7, 2001, Revision E, with Amendment 1 dated April 18, 2006 and Amendment 2 dated September 13, 2006, IBR approved for § 73.682, except for section 5.1.2 of Annex A, and the phrase ''see Table A–3'' in section 5.1.1. Table A2 and section 5.1.3 Table A4.

(3) ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,'' (Revision C) January 2, 2006, with Amendment 1 dated May 9, 2006, and IBR approved for § 73.682, IBR approved for §§ 73.9000–73.9001.

* * * * *

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