

## I. Background

Section 1871(a)(3)(A) of the Act requires the Secretary, in consultation with the Director of the Office of Management and Budget (OMB), to establish and publish a regular timeline for the publication of a final rule based on the previous publication of a proposed rule or an interim final rule. In accordance with section 1871(a)(3)(B) of the Act, such regular timeline may vary among different regulations, based on the complexity of the rule, the number and scope of the comments received, and other relevant factors. The timeline for publishing the final regulation, however, cannot exceed 3 years from the date of publication of the proposed or interim final rule, unless there are exceptional circumstances. After consultation with the Director of OMB, we published a notice in the **Federal Register** on December 30, 2004 (69 FR 78442) establishing a general 3-year timeline for finalizing a Medicare proposed and an interim final rule.

Section 1871(a)(3)(C) of the Act states that a Medicare interim final rule shall not continue in effect if the final rule is not published before the expiration of the regular timeline and, if applicable, before the expiration of each succeeding one-year period, unless the Secretary publishes at the end of the regular timeline and any subsequent 1-year extension a notice of continuation that includes an explanation of why the regular or previously extended timeline was not met. Upon publication of such a notice, the regular timeline or such timeline as previously extended for publishing the final rule is extended for 1 year.

## II. Notice of Continuation

Section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), amended section 1869 of the Act to provide for significant changes to the Medicare claims appeal procedures. On November 15, 2002, we published in the **Federal Register** a proposed rule (67 FR 69312) consistent with Section 521 of BIPA. An interim final rule with comment period implementing the BIPA provisions as well as further changes to the claim appeals procedures enacted in Title IX of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) appeared in the **Federal Register** in March 2005 (70 FR 11420). Under the regular timeline for publication of a final rule, we were required to publish a final rule responding to public comments on the interim final rule with comment period

no later than March 1, 2008. However, on February 29, 2008, we published in the **Federal Register** a continuation notice entitled "Medicare Program; Changes to the Medicare Claims Appeal Procedures; Continuation of Effectiveness and Extension of Timeline for Publication of Final Rule" to extend the timeline for publication of the final rule for 1 year until March 1, 2009 (73 FR 11043).

This notice announces an additional extension of the timeline for publication of the final rule and the continuation of effectiveness of the March 2005 interim final rule with comment period. We are not able to meet the timeline for publication of the final rule due to the need to allow an opportunity for full consideration of issues of law and policy raised in the regulation. We believe it is necessary and appropriate to delay publication of this final rule in order to afford the President's appointees and designees an opportunity to further review and consider the laws and policies that will be set forth in the final rule.

Therefore, this notice extends the timeline for publication of the final rule until March 1, 2010. In accordance with section 1871(a)(3)(C) of the Act, the interim final rule with comment period shall remain in effect through March 1, 2010 (unless the final rule is published and becomes effective before March 1, 2010).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 23, 2009.

**Ashley Files Flory,**

*Deputy Executive Secretary to the Department.*

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 15, 27, 54, 73, 76, and 90**

**[MB Docket No. 09-17; FCC 09-11]**

### Implementation of the DTV Delay Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document issues the final rules in the Second Report and Order implementing the DTV Delay Act. It amends the requirements of the DTV Consumer Education Initiative, as well as extending the duration of certain

licenses and construction permits, to conform to the new, June 12, 2009, transition date. It announces the Commission's intent to apply the provisions of the Analog Nightlight Order to the period after June 12, 2009. And, it established March 17, 2009 as the date by which stations must notify the Commission of their planned timing to complete their transition and April 16, 2009 as the first date on which stations can terminate analog signals.

**DATES:** Effective February 27, 2009, except for §§§ 15.124, 54.418, and 76.1630, which are effective April 1, 2009.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order*, FCC 09-11, adopted and released on February 20, 2009. (The companion Notice of Proposed Rulemaking (NPRM) to this document is published elsewhere in this issue of the **Federal Register**.) 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](mailto:fcc504@fcc.gov) or call the

Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Final Paperwork Reduction Act ("PRA") Analysis

This Report and Order was analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA") and contains modified information collection requirements. Specifically, this Report and Order modifies several existing DTV transition-related information collection requirements to reflect the statutory change in the nationwide transition date to June 12, 2009. The Commission has obtained OMB approval for these non-substantive changes, and is seeking OMB approval under OMB's emergency processing rules for the requirement on broadcast stations to file a binding notice of their proposed analog service termination date.

## Summary of the Report and Order

### I. Introduction

1. In this Report and Order, the second in response to the Congressional extension of the digital television (DTV) transition period, we take a number of actions necessary to implement the "DTV Delay Act," which was enacted into law on February 11, 2009. In the DTV Delay Act, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009, in an effort to provide consumers additional time to prepare for the transition from analog to digital broadcasting. It afforded the FCC discretion to allow broadcasters to complete their transitions prior to June 12, 2009, subject to such rules as the Commission finds necessary or appropriate. The Act instructed the Commission to take any actions "necessary or appropriate to implement the provisions, and carry out the purposes" of the date extension, and to do so within 30 days. In addition, the DTV Delay Act amends the Digital Television and Public Safety Act of 2005 ("DTV Act"), Public Law 109-171, 120 Stat. 4 (2006), to direct the Commission to "take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by June 13, 2009; and (2) to require by June 13, 2009, \* \* \* all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698

megahertz, inclusive)." The Commission has already taken a number of steps to comply with this directive. We issued a series of public notices (PNs) establishing and implementing the early transition process for stations that transitioned on February 17, 2009. In the first of these PNs, we also noted that early transitions are prohibited between February 18 and March 14. We also released the *First Report and Order*, 74 FR 7654 (Feb. 19, 2009), in the DTV Delay Act docket, extending the analog license terms and adjusting the construction permits for the full power television stations subject to the DTV Delay Act.

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

### II. Executive Summary

3. This Report and Order carries out the most time sensitive of the remaining actions necessitated by the delay in the transition deadline. The most fundamental change to our rules, licenses, etc., made necessary by the DTV Delay Act is that all references to the transition deadline must be revised to conform to the new date established in that Act. Thus, for each rule or order addressed in this Omnibus order that refers to "February 17, 2009," or otherwise references the date of the transition deadline, we revise the rule to read "June 12, 2009" or make other revisions as appropriate; for example, Section 2(c) of the DTV Delay Act extends certain license terms and construction deadlines for the recovered spectrum for 116 days. In many cases, some additional revision is or will be necessary. We make additional revisions in the following areas in this Report and Order, and we intend to follow up quickly with additional rulemakings as needed.

#### 4. DTV Consumer Education Initiative rules

- We extend the duration of the *DTV Consumer Education Initiative* requirements, including reporting requirements, so that most expire at the end of the second calendar quarter, in which the transition now ends, rather than at the end of the first calendar quarter, in which the transition originally ended.

- We revise the guidance text that is used as the basis for multichannel video programming distributor (MVPD), eligible telecommunications carrier (ETC), and manufacturer notices to reflect that the transition deadline has been extended and that many stations will transition or have transitioned prior to that date. We also require these notices to include contact information for the FCC Call Center and the NTIA Coupon Program, as well as a suggestion that readers contact their local television station for additional information. These revised requirements take effect April 1, in order to provide affected parties with sufficient time to prepare revised notices.

- Broadcast stations must comply with one of three sets of requirements for consumer education, choosing Options One or Two if they are a commercial station, or Options One, Two, or Three if they are a noncommercial station. We find that Option One broadcasters must continue to provide viewers with the maximum level of consumer education, and revise the guidance text that is used as the basis for on-air notices to reflect that the transition deadline has been extended and that many stations will transition or have transitioned prior to that date.

- We find that Option Two broadcasters must begin a new 100-day countdown to the transition on March 4, 2009. Nevertheless, we also seek comment in the NPRM about whether this requirement should be modified to better educate and inform consumers. Pending any modifications as a result of our consideration of the comments filed in response to that NPRM, Option Two broadcasters must begin a new 100-day countdown on March 4.

- We find that Option Three broadcasters must continue to provide viewers with the maximum level of consumer education.

- We revise Form 388 to reflect the changes above, and remind broadcasters that they must continue to file it and post it online quarterly up to and including the final quarter in which they have education obligations under these rules.

- We provide notice that the DTV.gov Transition Partners program has been

discontinued, and that as a result no additional filings will be required as a result of participation in the program.

#### 5. *Third DTV Periodic Report and Order*

- We revise the analog service termination notification procedure contained in the *Third DTV Periodic Report and Order*, 72 FR 37310 (July 9, 2007), and require all stations to notify the Commission no later than Tuesday, March 17 of the date they will terminate analog television service.

- Consistent with the *Third DTV Periodic Report and Order* and the timing adopted in this Order, we require all full-power television stations to update their DTV Transition Status Reports, FCC Form 387, no later than Thursday April 16, 2009 to reflect their transition plans as a result of the delay in the nationwide transition deadline.

- We revise our rules to reflect changes to construction deadlines and our rules for obtaining extensions of time to construct digital facilities.

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

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

#### 7. *Analog Nightlight*

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

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

- We invite comments, in an expedited, one-round, five (5) day cycle, in the Notice of Proposed Rulemaking (NPRM), published elsewhere in this issue of the **Federal Register**, regarding additional amendments to our rules and regulations to carry out the purposes of the DTV Delay Act.

- In particular, we propose to revise the analog service termination requirements for stations still operating in analog. We believe that these proposed revisions to the procedures in the *Third DTV Periodic Report and Order*, in addition to the notification changes adopted in the Order, are necessary to implement the DTV Delay Act.

- We also seek comment on possible revisions to the consumer education rules, particularly the adoption of a requirement that broadcasters notify viewers of predicted service loss. We ask whether broadcasters should

provide information on rescanning with digital equipment, and, where applicable, information regarding the need for different equipment due to changes from UHF to VHF service, or vice versa. We also seek comment on amendments to the "100-Day Countdown" responsibility of Option Two broadcasters and the 30 minute informational video that is required in both Option Two and Option Three. Finally, we ask whether stations that participate in or support the post-transition analog nightlight program should be exempt from post-transition consumer education requirements.

### III. Discussion

#### A. *Consumer Education*

9. In early 2008, the Commission adopted a number of rules designed to educate viewers and consumers about the digital television transition. Many of these rules were specifically tied to the original February 17, 2009 nationwide transition date, and all were set to expire on a schedule reflecting that the transition would conclude in the first quarter of 2009. Therefore, now that the transition has been extended, most of these rules must be revised to continue to serve their educational purpose.

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

#### 1. *Comprehensive Changes*

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

12. The Consumer Education rules, as originally adopted, remain in effect until the conclusion of the calendar quarter in which the transition ended; thus, because the transition originally would have ended in the first quarter of

2009, the consumer education requirements would have remained in effect only through the end of March, 2009. The DTV Delay Act has postponed the transition deadline to the second quarter of 2009, and recognized that for many stations, and some entire markets, the transition will occur even sooner. Therefore, we find that it is appropriate for the revised consumer education requirements to remain in effect until the conclusion of the second quarter of 2009. We encourage broadcasters to revise their messaging as appropriate after the conclusion of the transition. We will exercise our prosecutorial discretion regarding the specific content of PSAs and crawls run pursuant to Option One. In each case where the Consumer Education rules refer to "March 31, 2009," "in March 2009," etc., we are revising them to reflect that the rules will conclude at the end of June, 2009. As a result, each of the rules discussed below will remain in effect through June 30, 2009, even where we find that no other change is necessary to bring the rule into compliance with the DTV Delay Act.

#### 2. *Manufacturer, ETC, and MVPD Notices*

13. Many of the rules in the *DTV Consumer Education Initiative* require industry stakeholders to provide their customers with paper or electronic notices that briefly explain the DTV transition. The rules governing manufacturers, ETCs, and MVPDs use identical language to describe the minimum information that must be provided in these notices:

After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

Although this text is not mandatory, we recognize that many of the affected stakeholders follow it closely. In order to carry out the purposes of the DTV Delay Act, we find that we must revise this guidance to reflect not only that all full-power analog broadcasting will conclude on June 12, 2009, but that it may conclude earlier in many cases. We note that stations participating in the statutory nightlight program will continue to provide some analog service after June 12, 2009.

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

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

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

15. Manufacturers, ETCs, and MVPDs should include language based on this revised guidance in their notices as soon as practicable, but in any case no later than April 1, 2009. Thus, ETC and MVPD notices mailed in April must include updated language, and the notices included with television receivers and related devices manufactured in April must include updated language. We recognize that some companies may have already printed sufficient transition notices to meet their needs through March 31, 2009, the original conclusion of the education campaign, and have no desire to penalize these companies for being prepared. Because the existing rules expire on March 31, 2009, a failure to begin distribution of revised notices by at least April 1 will create a gap in the information provided to consumers. The original *DTV Consumer Education Initiative* was released by the Commission on March 3, 2008, and the rules became effective on April 30, 2008, 30 days after OMB approval for the rules was published. Therefore, ETCs and MVPDs had 58 days to prepare to fully comply. As discussed in the *Consumer Education Sua Sponte*

*Reconsideration*, the Consumer Electronics Association argued that consumer electronics manufacturers need the "same time period for implementation of the notice requirement that is required of MVPDs" and ETCs. That order was released on April 23, 2008 and provided for a start date of May 30, 2008 for manufacturer rules, giving them 37 days to prepare to fully comply. Manufacturers had no difficulty doing so. A date certain of April 1, 2009 for all three groups will provide manufacturers with slightly more time to comply than they received in the reconsidered order, and MVPDs/ETCs with slightly less time, but we anticipate that the time provided will be sufficient to allow the parties to comply. All of the affected parties are already including DTV consumer education notices pursuant to the existing rules, so the only change will be to the text printed on those notices. As discussed in the *DTV Consumer Education Initiative*, a party responsible for manufacturer notices (such as, in some cases, retailers and distributors) can comply by placing a sticker on the outside of the packaging of a covered device (47 CFR 15.124(a)) that reflects the revised notice text and the change in the transition deadline. The party responsible for inclusion of the notice is the "manufacturer," or the party acting as the manufacturer under our rules; *i.e.*, the "responsible party" as defined in Section 2.909 of the Commission's Rules.

### 3. Broadcaster On-Air Consumer Education

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

broadcasters to the companion NPRM, which raises questions about additional or revised requirements for broadcasters, including a requirement to provide viewers with notifications about any predicted service loss.

#### a. Option One

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

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

#### b. Option Two

19. The rules require broadcasters that selected Option Two to air a certain

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

#### c. Option Three

20. Option Three, available only to noncommercial educational broadcasters (NCEs), does not require airing of a certain number of PSAs or crawls. Instead, it requires broadcasters to air several minutes of DTV education daily, allocated between PSAs and longer form messages as the broadcaster chooses. However it is allocated, NCEs must devote an increasing number of minutes to consumer education as the transition approaches. During the first period in which the rules were in effect, they were at a minimum level of only 1 minute of education daily, with 7.5 minutes a month in prime time. The rules increased to their maximum level for the final months prior to the transition. Beginning on November 1, 2008, and extending through March 31, 2009, broadcasters were required to air 3 minutes of education daily, with 22.5 minutes a month in prime time. Thus, Option Three broadcasters have already

been engaged in this maximum level of consumer education, and have planned to continue to provide it through the conclusion of the first quarter of 2009. As discussed above, the conclusion of the nationwide consumer education campaign has now been extended to the end of the second quarter of 2009 (June 30, 2009). Given that this delay was driven by the need for greater consumer awareness, and the change to the "hard" transition date, it would be inappropriate to diminish the amount of information available to television viewers now. Furthermore, broadcasters are now in the final months of the transition, and the Commission has previously found that providing the most extensive information to viewers is essential during this time period. Therefore, we will change only the end date of this rule, and Option Three broadcasters must continue to air 3 minutes of education daily, with 22.5 minutes a month in prime time.

#### d. Broadcaster Reporting

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

from OMB for these minor changes to the forms.

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

#### 4. Other Reporting

##### a. 700 MHz Auction Winner Consumer Education Reporting

23. The rules governing 700 MHz auction winners do not require particular outreach efforts, but they do specify that auction winners must, for "the remaining period of the DTV transition," file a report on a quarterly basis. This report must detail what, if any, DTV transition consumer education efforts they undertook in the previous quarter. The rules provide that the reporting requirement terminates with the filing of the report for the first quarter of 2009. We revise the rules to reflect the extension of the remaining period of the transition by noting that auction winner reports must be filed for the second quarter of 2009.

##### b. DTV.gov Partner Consumer Education Reporting

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

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

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

#### 1. Analog Service Terminations

26. We revise our analog (and pre-transition digital) service termination and reduction procedures to require all stations to file a binding notice of their proposed analog service termination date by March 17, 2009. The rule changes herein apply to analog service terminations and substantial reductions to analog service. In general, a "substantial" reduction is one that would affect 10 percent or more of the population in a station's service area, as represented by the predicted Grade B contour. References to "termination" here are intended to apply to such substantial reductions as well as to terminations. This notification, and the procedures that will be adopted in this docket, supersede the early analog termination procedures established in the *Third DTV Periodic Report and Order*. As a result, no service termination notifications may be filed prior to the adoption of the new procedures and form proposed in the companion NPRM. We find that this revision is necessary to implement and carry out the purposes of the DTV Delay Act. We establish March 17, 2009, as the date certain by which stations must notify us of the date on which they intend to terminate analog service. In this notification, stations must either commit to terminating on June 12, 2009, or on a date prior to the nationwide DTV transition deadline subject to the procedures to be adopted in this proceeding. Any station that does not notify us by March 17, 2009, will be assumed to be terminating on June 12, 2009, and will not be permitted to terminate their analog service prior to June 12, 2009 (except in the case of equipment failure, natural disaster, or other unforeseeable emergency). We seek comment in the companion NPRM on proposed procedures and requirements for stations seeking to complete their transition prior to June 12, 2009. We expect to adopt an Order finalizing the requirements no later than March 13, 2009. We strongly encourage major network affiliates that intend to transition prior to June 12 to communicate with the other affiliates serving the same viewing area as early as possible.

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

prepare for the change in television service.

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

29. As discussed below in the NPRM, we encourage stations that wish to transition before June 12, 2009 to file comments in the DTV Delay Act rulemaking docket (No. 09-17) indicating the date they would like to transition, why they need to transition early and the basis for the particular date they prefer. Such comments will be helpful to us in formulating the final procedures. However, dates listed in a station's comments will not represent binding commitments, and will not replace the March 17 notices that all stations must file. Indeed, any notifications filed with us before the adoption of new procedures through this rulemaking, including notices filed prior to the release of this Order, will be for informational purposes only and will not serve as official notice authorizing stations to terminate. Any stations that have already filed termination notifications will be required to re-file pursuant to the new procedures and form to be adopted. Nonetheless, we believe that having more information available to the Commission when drafting the specific requirements for early termination will result in a better outcome, and will consider all comments from stations in crafting revised procedures.

30. We find that the DTV Delay Act, taken as a whole, authorizes the

Commission to change the procedures established in the *Third DTV Periodic Report and Order* as necessary to implement and carry out the purposes of the DTV Delay Act. Section 4(a) of the Act provides that “[n]othing in this Act is intended to prevent” early termination “in accordance with the [FCC’s] requirements in effect on the date of enactment of this Act, including the flexible procedures established in the [*Third DTV Periodic Report and Order*].” Section 4(c) of the Act authorizes the Commission to “adopt or revise its rules, regulations, or orders or take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act.” Because Section 4(a) is written in permissive terms with a limiting proviso (“Nothing in this Act is intended to prevent \* \* \*”), and does not prohibit the Commission from modifying its early termination procedures, and because Section 4(a) grants the Commission broad discretion to revise its rules “as necessary or appropriate” to carry out the Act’s purposes, we find that the Act, as a whole, authorizes the Commission to modify the analog (and pre-transition digital) service termination procedures initially established in the *Third DTV Periodic Report and Order*. We find that Congress simply intended in Section 4(a) of the DTV Delay Act to make it clear that it was not overriding the FCC’s existing termination procedures—not to prevent the FCC from modifying those procedures. We note, however, that the new procedures that we adopt herein and propose in the companion NPRM will provide stations with flexibility to terminate analog (and pre-transition digital) television service before the new transition deadline of June 12, 2009.

31. The *Third DTV Periodic Report and Order* established streamlined notification procedures for stations planning to terminate analog service on a date 90 days or less before the transition date. Such early terminations were permitted if “necessary for purposes of the transition,” and with notification to the Commission as well as to viewers. In the *February 5 Public Notice*, we stated that for analog terminations on or after March 14, stations must notify us at least 30 days prior to the termination date and provide viewer notifications for at least 30 days prior to their termination of analog service pursuant to the *Third DTV Periodic Report and Order* procedures. Except in the case of equipment failure, we said we would not permit stations to terminate analog

service with less than 30 days notice to the Commission and the stations’ viewers. We reserved the right, however, to amend these rules and procedures, if necessary, and we do so here in order to carry out the purposes of the DTV Delay Act.

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

## 2. Transition Status Reports (FCC Form 387)

33. Consistent with the *Third DTV Periodic Report and Order* and the timing adopted in this Order, we require all full-power television stations to update their DTV Transition Status Reports, FCC Form 387, no later than Thursday April 16, 2009 to reflect their transition plans as a result of the delay in the nationwide transition deadline. Stations that already filed an update since enactment of the DTV Delay Act to show that they terminated analog television service on or before February 17, 2009 need not file this update. In the *Third DTV Periodic Report and Order*, the Commission established the Form 387 to require all full-power television stations to detail (1) their current transition status, (2) any additional steps needed to commence their full, digital operations, and (3) their timeline to meet the transition deadline. In addition to two mandatory filing dates in February and October of 2008, the Commission required stations to promptly update their forms as events warrant, until they reported the completion of their transition. Because all stations must reevaluate and adjust their plans in light of the delay of the transition date, we are requiring this mandatory update to the Form 387 for stations to provide the details of their revised transition plan, including if they intend to continue broadcasting an analog signal until June 12, 2009. We

are also revising Form 387 to conform to the DTV Delay Act and reflect the new June 12, 2009 transition deadline. The Commission has received approval from OMB for these minor changes to the form. The Form 387 must be updated electronically using the Commission’s Consolidated Database System (“CDBS”) Electronic Filing System.

## 3. Construction Deadlines, Extension Requests, and Tolling Notifications

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

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

number of stations are operating with reduced analog facilities pursuant to special temporary authority, based upon a showing that the service reduction was directly related to the construction and operation of their post-transition facilities, and extended the date of termination for these STAs from February 17, 2009 to June 12, 2009 (11:59:59 p.m. local time). This extension, however, does not apply to STAs granted to stations for reasons not related to the DTV transition including those STAs filed for emergency reductions in power. These other stations must request Commission approval for an extension to remain at reduced power by filing an analog engineering STA. These STAs will be reviewed on a case-by-case basis. By this Order we also extend until June 12, 2009 (11:59:59 p.m. local time) the license terms for pre-transition digital operations and adjust the pre-transition digital authorizations, accordingly. Stations' construction permits expire on June 12, 2009 at 11:59:59 local time. We also note that a station which has a maximized construction permit that expires on June 12, 2009, and which completes construction of its initial post-transition authorized facility by that date may file an application for a license to cover the constructed initial facility, and may also request that the construction deadline for its maximized construction permit be extended to three years from the date its maximized construction permit applications was granted. Such requests should be directed via e-mail to Kevin Harding of the Media Bureau's Video Division at [Kevin.Harding@fcc.gov](mailto:Kevin.Harding@fcc.gov).

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

standard applies to the extended construction deadline, and stations may use only the tolling criteria as a basis for failing to complete construction. We revise Section 73.3598(b)(3) of our rules to reflect the new transition deadline.

37. *Phased Transition Provisions.* We find there is no need to extend the Special Temporary Authority (STA) deadlines established for stations through the phased transition provisions of the *Third DTV Periodic Report and Order*. In the *Third DTV Periodic Report and Order*, the Commission adopted two provisions for a "phased transition" in an effort to offer broadcasters regulatory flexibility in meeting their post-transition construction deadlines without disappointing viewer expectations after the transition deadline. First, the Commission granted a six month STA to stations to temporarily remain on their pre-transition DTV channel with an option to seek another six months, provided the station continues to satisfy the conditions for this STA. These stations must commence operations on their final, post-transition (digital) channel no later than February 18, 2010. Second, the Commission granted a one-time six-month STA to stations to build less than their full, authorized facility by their construction deadline. These stations must commence operations at full, authorized digital facilities no later than August 18, 2009. To qualify for these provisions, stations were required to meet a service requirement to minimize the loss of service after the transition deadline, were prohibited from causing impermissible interference to other stations or preventing other stations from making their transition, and were required to comply with a viewer notification requirement. Pursuant to the first phased transition provision, the Commission allowed stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided: (1) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. Pursuant to the second phased transition provision, the Commission allowed stations to operate their post-transition facilities at less than their full, authorized facilities, provided they demonstrated either: (1) A "unique technical challenge" (as

defined in the *Third DTV Periodic Report and Order*) and could serve at least 85 percent of the same population that receives their current analog TV and DTV service; or (2) A significant technical impediment to the construction of their full, authorized facilities that would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted in the *Third DTV Periodic Report and Order* and could serve at least 100 percent of the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. Both phased transition provisions also require the station to notify viewers on its analog channel about the station's planned delay in construction and operation of post-transition (DTV) service. The viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the station's termination of full, authorized analog service. We note that stations that started these viewer notifications in advance of a previously planned February 17, 2009 termination that did not occur must restart airing these notifications 30 days in advance of their phased transition. We find it unnecessary at this time to automatically extend these STAs. In many cases, these phased transition STAs were granted to address construction impediments due to weather-related concerns. To the extent additional time is needed, stations with a phased transition STA must comply with Section 73.3598(b) tolling standard established the *Third DTV Periodic Report and Order*.

#### C. 700 MHz Band License Periods and Construction Requirements

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

39. In this Report and Order, we conform the license period in section

27.13, and construction deadlines provided in section 27.14, to the provisions of section 2(c) of the DTV Delay Act. Section 27.13 of our rules currently provides that the license period for the licenses associated with the 698–763 MHz and 776–793 MHz bands are for a term not to exceed ten years from February 17, 2009, the previous digital television transition date. Section 27.14 of our rules similarly ties the construction benchmarks and associated reporting requirements to February 17, 2009. Accordingly, we modify these dates to implement the 116 day extension required by the DTV Delay Act.

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

#### D. Analog Nightlight Program

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

17, 2009, we conclude that the 30-day period applicable to the Analog Nightlight program will begin following the new transition deadline and will run from and including June 13 through July 12, 2009. We note that this statutory post-transition Nightlight is distinct from the 60-day pre-transition “enhanced nightlight” adopted for some network affiliates that transitioned on February 17, 2009, and proposed in the companion NPRM.

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

43. We see no reason to revise the Analog Nightlight program as we implemented it in the *Analog Nightlight Order* and will retain the parameters of the program without change except for the delay in timing. We note, however, that it is necessary to correct Appendix A to the *Analog Nightlight Order* by deleting three stations that were listed in error and correcting the column headings in that appendix for the “pre-” and “post-” transition channels. The titles of columns G and H in Appendix A were reversed. Column G, which was titled Post-Transition Channel, should be “Pre-Transition Channel” and Column H, which was titled Pre-Transition Channel, should be “Post-Transition Channel.”

44. The following stations were incorrectly listed in Appendix A of the *Analog Nightlight Order* as pre-approved to be eligible for the analog nightlight program: KXGN, Glendive, MT and KALO, Honolulu, HI, both of which have been authorized to use their analog channels for post-transition digital operation, and therefore cannot remain on their analog channels after

the transition; and KPBS, San Diego, CA, whose analog channel 15 has been authorized for public safety use following the transition, thus eliminating it from eligibility as a nightlight.

45. We intend to reevaluate the stations listed as eligible in Appendix A of the *Analog Nightlight Order* as we near the new June 12, 2009 transition deadline to determine if there are changes in circumstances and facilities that call for adjustments to those listed. Stations that want to provide nightlight service may notify us in accordance with the filing procedures established in the Analog Nightlight Order. Stations that are pre-approved by the Commission to be eligible to participate in the analog nightlight program may notify the Commission of their intent to participate in the analog nightlight program by either filing a Legal STA electronically through the Commission’s Consolidated Database System (“CDBS”) using the Informal Application filing form or by sending an e-mail to [nightlight@fcc.gov](mailto:nightlight@fcc.gov); stations that are not pre-approved for the program by the Commission may, nonetheless, request Commission approval to participate in the analog nightlight program by filing an Engineering STA notification electronically through CDBS using the Informal Application filing form. We delegate to the Media Bureau or Office of Engineering and Technology, as appropriate, the authority to revise and adopt amended lists of pre-approved stations, as may be necessary, including issuing an Erratum to correct the Appendix A of the *Analog Nightlight Order*, consistent with the preceding paragraphs above.

#### IV. Procedural Matters

##### A. Statutory Authority and Good Cause Findings

46. For the reasons below, pursuant to section 4(c) of the DTV Delay Act, we conclude that the rule changes and other actions herein are not subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.* (APA), Congressional Review Act, 5 U.S.C. 801, *et seq.* (CRA), Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), or any other provision of law that otherwise would apply and would impede implementation of the statutory directives. In any event, we also conclude that there is good cause for departure from such requirements here. Nevertheless, we are providing notice and an abbreviated opportunity for public comment regarding the issues addressed in Section IV above to allow

interested parties to contribute to our consideration of these issues to the extent possible in the limited time that Congress has provided.

47. Section 4 of the DTV Delay Act provides that, “[n]otwithstanding any other provision of law,” the Commission must “adopt or revise its rules, regulations, or orders or take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act and the amendments made by this Act” within 30 days of the date of its enactment. The “notwithstanding” clause plainly excuses compliance with otherwise applicable legal requirements that would impede FCC actions to implement the DTV Delay Act by the statutory deadline. In other contexts, the DC Circuit has interpreted similar “notwithstanding” language “to supersede all other laws, stating that ‘a clearer statement is difficult to imagine.’” The plain meaning of the DTV Delay Act’s language is reinforced by the circumstances surrounding its passage. Congress extended the imminent DTV transition deadline to enhance national preparedness for the DTV transition, and examination of the legislative history reflects its recognition that accomplishing this goal would require extraordinary and immediate action by the Commission and others. Thus, the Act requires the FCC to act not later than 30 days after the date of enactment, and grants it broad discretion within that brief period to take such actions “as may be necessary or appropriate” to accomplish the Act’s goals. For the reasons explained elsewhere in this Order, we find that the rulemaking and other actions herein are necessary and appropriate to implement the DTV Delay Act and carry out its purposes. As discussed below, compliance with the APA and other procedural administrative law requirements would frustrate or impede the FCC’s ability to meet the statutory deadline. Therefore, section 4(c) of the Act supersedes such legal requirements.

48. Even if the statutory language were ambiguous, we would interpret it to exempt the Commission from APA and other procedural administrative law requirements that cannot be reconciled with the statutory mandate. As stated above, the Act requires the FCC to implement its provisions and purposes within 30 days. The fact that many Commission rules, regulations and orders are tied to the original statutory deadline of February 17, 2009, combined with the Act’s enactment only a few business days before February 17, reduced the time frame for many of the necessary actions from one month to a

matter of days. Moreover, given the number and complexity of rulemaking and other actions required to implement the DTV Delay Act and accomplish its purposes, combined with the fact that the Act itself postpones the nationwide DTV transition for a limited period, the FCC cannot fulfill the statutory mandate and comply with otherwise applicable rulemaking and other legal requirements. There is insufficient time to publish a Notice of Proposed Rulemaking in the **Federal Register**, allow time for meaningful comment and consider those comments before taking all of the necessary legal actions. The APA also requires **Federal Register** publication at least 30 days before a rule’s effective date. Here, a standard comment period after **Federal Register** publication and a 30-day waiting period before rules become effective would exceed the 30-day period after enactment during which agency implementation is required. Other legal requirements cited above likewise require more time than circumstances allow. Therefore, even if the statute were ambiguous, we would interpret it to supersede requirements that cannot be harmonized with the statutory mandate, including the APA, CRA, and RFA.

49. We also find that there is good cause for departure from the APA requirements of notice and comment, the requirements of the CRA, and a 30-day delay before rules become effective under the circumstances here. As discussed above, the extraordinary circumstances surrounding the DTV Delay Act create an urgent need for rapid action. The statutory deadline for Commission action is no more than 30 days from enactment. The DC Circuit has held that “the extremely limited time given by Congress” to an agency for adoption of regulations “is a crucial factor in establishing ‘good cause’” under the APA. We note that many of our actions are of an interim nature, in that they will no longer be in force after June 13, 2009. Moreover, some of our actions, such as extending the terms of the licenses for the recovered spectrum (including the license period and construction requirements associated with those licenses) for 116-day period, are non-discretionary or ministerial in nature. Accordingly, even if our actions were subject to the APA (and, as explained above, they are not), we find that there is good cause for departure from APA requirements because the circumstances make compliance impracticable or unnecessary. Nevertheless, as indicated above, we are providing notice and an abbreviated

opportunity for public comment regarding the issues addressed in Section IV above to allow interested parties to contribute to our consideration of these issues to the extent possible in the limited time that we have. We find that the five-day comment period provided herein is the maximum possible opportunity for public comment that we can provide and still fulfill our statutory mandate to take such actions as are necessary or appropriate to implement the DTV Delay Act and accomplish its purposes within 30 days of the Act’s enactment, or no later than March 13, 2009.

#### *B. Petitions for Reconsideration To Be Expediently Resolved*

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

#### **V. Ordering Clauses**

51. *It is ordered* that, pursuant to the authority contained in Sections 1, 2, 4, 7, 303, 309, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 157, 303, 309, and 337, and Sections 2 and 4 of the DTV Delay Act, Public Law 111–4, 123 Stat. 112, to be codified at 47 U.S.C. 309(j)(14) and 337(e), this Report and Order *is adopted* and the Commission’s Rules *ARE hereby amended* as set forth in the Appendix.

52. *It is also ordered*, pursuant to the authority contained in Section 4(c) of the DTV Delay Act, DTV Delay Act § 4(c), the rules, forms and procedures adopted in this Report and Order will be effective upon publication of the summary of the Report and Order in the **Federal Register**, except for the revisions to Parts 15, 54, and 76 of Title 47 of the Code of Federal Regulations, which are effective beginning April 1, 2009. We anticipate that the summary of the Order will be published in the **Federal Register** at least 30 days before the effective date of April 1, 2009. In the event that publication is delayed, however, we find good cause for these rules to be effective on April 1, 2009, to ensure that consumers are informed about the digital television transition that is occurring on a rolling basis nationwide, and no later than June 12, 2009.

List of Subjects

47 CFR Part 15

Communications equipment, Digital Television, and Digital Television Equipment.

47 CFR Part 27

Communications common carriers, Radio, Wireless Communications Services, 700 MHz Band.

47 CFR Part 73

Digital Television, Reporting and recordkeeping requirements, and Television.

47 CFR Part 76

Cable Television and Digital Television.

47 CFR Part 90

Radio, Private Land Mobile Radio Services, Public Safety Communications, 700 MHz Band. Federal Communications Commission.

William F. Caton, Deputy Secretary.

Final Rules

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

PART 15—RADIO FREQUENCY DEVICES

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

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

2. Amend § 15.124 as follows:

a. In paragraph (a), remove the date "May 30, 2008" and add in its place the date "April 1, 2009" and remove the date "March 31, 2009" and add in its place the date "June 30, 2009".

b. Revise paragraphs (b)(2)(i) and (ii) to read as follows:

§ 15.124 DTV transition notices by manufacturers of televisions and related devices.

\* \* \* \* \*

- (b) \* \* \*
(2) \* \* \*

(i) The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but your local television stations may switch sooner. After the switch, analog-only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting. Analog-only

TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

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

\* \* \* \* \*

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

3. The authority citation for part 27 continues to read as follows:

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

4. Amend § 27.13 to revise paragraph (b) to read as follows:

§ 27.13 License period.

\* \* \* \* \*

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

\* \* \* \* \*

§ 27.14 [Amended]

5. In § 27.14, paragraphs (g), (g)(1), (h), (h)(1), (i)(1), (l), and (m)(1) remove the date "February 17" and add in its place the date "June 13" each place it appears.

§ 27.20 [Amended]

6. In § 27.20, paragraph (c), remove the words "first quarter" and add in their place the words "second quarter".

§ 27.1310 [Amended]

7. In § 27.1310, paragraph (j), remove the date "February 17" and add in its place the date "June 13".

PART 54—UNIVERSAL SERVICE

8. The authority citation for part 54 continues to read as follows:

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

§ 54.418 [Amended]

9. Amend § 54.418 as follows:

a. In paragraph (a), remove the words "April 30, 2008" and add in their place the date "April 1, 2009," and remove the words "in March" and add in their place the words "on June 30,".

b. Revise paragraphs (b)(2)(i) and (ii) to read as set forth below.

c. In paragraph (d), remove the date "March 31, 2009" and add in its place the date "June 30, 2009".

§ 54.418 Digital television transition notices by eligible telecommunications carriers.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

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

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

\* \* \* \* \*

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.624 [Amended]

11. Amend § 73.624 as follows:

a. In paragraphs (d)(1)(vii) and (d)(3)(iii), remove the date "February 17, 2009" and add in its place, the date "June 12, 2009".

■ b. In paragraph (d)(3)(ii), remove the date "February 18, 2009" and add in its place the date "June 13, 2009".

■ 12. Amend § 73.674 as follows:

■ a. In paragraphs (b)(3), (c)(1), (d)(5), (e)(1) and (e)(2), remove the date "February 17, 2009" and add in its place the date "June 12, 2009" each place it appears, and remove the date "March 31, 2009" and add in its place the date "June 30, 2009" each place it appears.

■ b. In paragraphs (d)(6) and (d)(6)(iv), remove the date "November 10, 2008" and add in its place the date "March 4, 2009" and remove the date "February 17, 2009" and add in its place the word "transition".

■ c. Revise paragraph (c)(3)(vi)(A), to read as follows:

**§ 73.674 Digital television transition notices by broadcasters.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(vi) \* \* \*

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

\* \* \* \* \*

■ 13. In § 73.3598, paragraph (b)(3), remove the date "February 17, 2009" and add in its place the date "June 12, 2009".

**PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

■ 14. The authority citation for part 76 continues to read as follows:

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

■ 15. Amend § 76.1630 as follows:

■ a. In paragraph (a), remove the words "April 26, 2008" and add in their place the date "April 1, 2009," and remove the words "in March" and add in their place the words "on June 30,".

■ b. Revise paragraphs (b)(2)(i) and (ii) to read as follows:

**§ 76.1630 MVPD Digital Television Transition Notices.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

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

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

\* \* \* \* \*

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

■ 16. The authority citation for part 90 continues to read as follows:

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

**§ 90.528 [Amended]**

■ 17. In § 90.528, paragraph (d), remove the date "February 17" and add in its place the date "June 13".

**§ 90.1410 [Amended]**

■ 18. In § 90.1410, paragraph (j), remove the date "February 17" and add in its place the date "June 13".

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 001005281-0369-02]

RIN 0648-XN45

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** This rule is effective 12:01 a.m., local time, February 28, 2009, through June 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone 727-824-5305, fax 727-824-5308, e-mail [susan.gerhart@noaa.gov](mailto:susan.gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota for the hook-and-line fishery in the southern Florida west coast subzone is 520,312 lb (236,010 kg)(50 CFR 622.42(c)(1)(i)(A)(2)(i)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined the