

International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service
Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Outbound International
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
International Business Reply Service
Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]

Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions
[Reserved]

Part D—Country Price Lists for International Mail [Reserved]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–17; FCC 09–19]

Implementation of the DTV Delay Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the most essential remaining actions necessitated by the delay in the DTV transition deadline. 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. The Act directed the Commission to take any actions “necessary or appropriate to implement the provisions, and carry out the purposes” of the Act, and to do so

within 30 days. This document implements procedures and prescribes timing for stations to transition early, while providing viewers who are not prepared with a lifeline of analog service and both on-air and off-air educational information about the transition. The document also adjusts the consumer education requirements placed on broadcasters to eliminate any unnecessary burden after the transition while ensuring that on the most meaningful information is provided to viewers before they transition, and addresses other issues.

DATES: Effective March 13, 2009.

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

FOR FURTHER INFORMATION CONTACT: For more information, please contact Lyle Elder, Lyle.Elder@fcc.gov, at 202–418–2120; or Evan Baranoff, Evan.Baranoff@fcc.gov, at 202–418–7142, of the Policy Division, Media Bureau; or Eloise Gore, Eloise.Gore@fcc.gov, at 202–418–7200, of the Media Bureau. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams on (202) 418–2918, or via the Internet at PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Third Report and Order*, FCC 09–19, adopted and released on March 13, 2009. 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).

Summary of the Report and Order

I. Introduction

1. In this Report and Order, the third in response to the Congressional extension of the digital television (DTV)

transition deadline, we take the next actions necessary to implement the “DTV Delay Act,” which was enacted into law on February 11, 2009.¹ In the DTV Delay Act, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009, in an effort to provide consumers additional time to prepare for the transition from analog to digital broadcasting.² The Act directed the Commission to take any actions “necessary or appropriate to implement the provisions, and carry out the purposes” of the Act, and to do so within 30 days.³ The Commission has already taken steps to comply with the DTV Delay Act directive. We issued a series of public notices (PNs) establishing and implementing the early transition process for stations that transitioned on February 17, 2009.⁴ The first Report and Order in the DTV Delay Act docket extended the analog license terms and adjusted the construction permits for the full power television stations subject to the DTV Delay Act.⁵ The Second Report and Order, 74 FR 8868 (February 27, 2009) (“Omnibus Order”), and Notice of Proposed Rulemaking, 74 FR 8889 (February 27, 2009) (“NPRM”)⁶ addressed the

¹ DTV Delay Act, Public Law 111–4, 123 Stat. 112 (2009) (“DTV Delay Act”).

² See, e.g., 155 Cong. Rec. E240–02.

³ DTV Delay Act sec. 4(c). 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).” 47 U.S.C. 309 Note. The statutory deadline for Commission action is March 13, 2009.

⁴ FCC Announces Procedures Regarding Termination of Analog Television Service On or After February 17, 2009, Public Notice, FCC 09–6 (Feb. 5, 2009) (“February 5th PN”); FCC Releases Lists of Stations Whose Analog Operations Terminate Before February 17, 2009 or that Intend to Terminate Analog Operations on February 17, 2009, Public Notice, DA 09–221 (MB Feb. 10, 2009) (“February 10th PN”); FCC Requires Public Interest Conditions for Certain Analog TV Terminations on February 17, 2009, Public Notice, FCC 09–7 (Feb. 11, 2009) (“February 11th PN”); FCC Releases Lists of TV Stations’ Responses to Requirements for Analog Termination on February 17, 2009, Public Notice, DA 09–245 (MB Feb. 13, 2009) (“February 13th PN”).

⁵ Implementation of the DTV Delay Act, MB Docket No. 09–17, Report and Order and Sua Sponte Order on Reconsideration, FCC 09–9 (rel. Feb. 13, 2009), 74 FR 7654 (February 19, 2009) (“First DTV Delay Order”).

⁶ Implementation of the DTV Delay Act, MB Docket No. 09–17, Second Report and Order and Notice of Proposed Rulemaking, FCC 09–11, para 19 (rel. Feb. 20, 2009) (“Omnibus Order” or “NPRM”).

remaining time-sensitive actions necessitated by the delay in the transition deadline.⁷ The companion NPRM sought comment on the procedures for early analog termination and issues relating to DTV transition consumer education, and we address those issues in the instant Order.

2. The actions taken thus far, and again in this Order, balance consumers’ need for time and information with broadcasters’ need for flexibility. This balance is implicit in the DTV Delay Act, which extended the deadline for the transition expressly to provide the American public with more time to prepare for the transition to digital television, while allowing broadcasters to complete their transitions prior to June 12, 2009, subject to such rules as the Commission finds necessary or appropriate. This Order implements procedures and prescribes timing for stations to transition early while providing viewers who are not prepared with a lifeline of analog service and both on-air and off-air educational information about the transition. The Order also adjusts the consumer education requirements placed on broadcasters to eliminate any unnecessary burden after the transition while ensuring that the most meaningful information is provided to viewers before the stations complete their transition, and addresses other issues.

II. Executive Summary

3. This Report and Order takes the following actions to implement the DTV Delay Act:

Analog Service Terminations

- In the *Omnibus Order*, we revised our analog service termination and reduction procedures to require stations that have not terminated analog service to file a binding notice of their proposed analog service termination date by March 17, 2009.

- Stations that notify us by March 17, 2009 may proceed with their planned terminations without specific individual approval, with limited exceptions.

- We adopt the Analog Service Termination Notification form, which must be filed by every station that has not yet terminated analog service.

- Stations generally may not terminate analog service before April 16, 2009.

⁷ One of those actions was the adoption of rules for the Option Two 100-Day Countdown, which was subsequently temporarily waived. *Temporary Waiver of 100-Day Countdown Requirement*, Public Notice, FCC 09–15 (Mar. 3, 2009). As discussed in Section III.C.6, *infra*, we implement revised final rules for the countdown in this Order.

- Noncommercial educational stations may terminate before April 16, but not before March 27, if they certify in their analog termination form that they need to terminate before April 16 due to significant financial hardship.

- We require all stations that terminate before June 12, 2009, to air viewer notifications for the 30 days prior to their transition. These viewer notifications are based on those required in the *Third DTV Periodic Report and Order*, but also require information about service loss from stations predicted to lose more than 2 percent of their analog viewers.

- Major network affiliates may terminate analog service prior to June 12, 2009, provided at least 90 percent of their analog viewers will receive continuing full analog service from another major network affiliate through June 12, 2009.

- If a major network affiliate elects to terminate prior to June 12 and more than 10 percent of its viewers will not continue to have full analog service from another major network affiliate, the station must undertake specified public interest measures, and so certify on the Analog Service Termination Notification form: (1) At least 90 percent of the population in its Grade B analog contour must receive some analog service from a major network affiliate through June 12 (either “enhanced nightlight” or some combination of enhanced nightlight and full analog service from a major network affiliate); and (2) it will comply with the other public interest conditions set forth herein, including walk-in help centers, consumer referral telephone numbers, and DTV education and outreach.

- We permit all stations to terminate analog service at any time of day on their final day of analog service and require that they notify the Commission on the Analog Service Termination Notification form of the approximate time they will terminate.

DTV Consumer Education Initiative

- We amend the DTV Consumer Education Initiative requirements to ensure that consumers will receive the information they need to make proper preparations for the digital transition of the stations on which they rely for television service:

- Beginning April 1, 2009, if the FCC’s Signal Loss Report predicts that 2 percent or more of the population in a station’s Grade B analog service contour will not receive the station’s digital signal, the station must air service loss notices. These notices are in addition to the existing consumer education requirements.

○ Beginning April 1, 2009, all stations must include information about the use of antennas as part of their consumer education campaign, including information concerning a station's change from the VHF to UHF bands.

○ Beginning April 1, 2009, all stations must include information in their consumer education campaigns to inform and remind viewers about the importance of periodically using the rescan function of their digital televisions and digital converter boxes.

○ Beginning April 1, 2009, as part of its DTV consumer education campaign, every station must air notices providing the location and operating hours of walk-in DTV help centers in the station's market area; the FCC Call Center telephone number and TTY number; and the station's telephone number for receiving consumer referrals and calls from local viewers.

- We eliminate the requirement for most stations to continue broadcasting DTV transition educational information after they have terminated analog service.

- A station that has filed a request for an extension of the deadline for construction of its full, authorized post-transition digital facility, including a request for phased transition, or is operating under such an extension, must continue its DTV consumer education campaign until it completes construction and commences operation of its full, authorized post-transition digital facility.

- We amend the 100-Day Countdown requirement and require broadcasters subject to the Option Two consumer education rules to air a 60-day countdown to the date of their individual termination of analog service.

- We require broadcasters subject to the Option Two and Three consumer education rules to air a new, up-to-date 30 minute informational video before they transition. This video must include locally specific information, including information about the transition dates of all stations in the market.

- We revise Form 388, the DTV Quarterly Activity Station Report, to reflect the changes we have made to the *DTV Consumer Education Initiative* broadcaster rules in this Report and Order.

Other Issues

- We extend until December 14, 2009, the deadline for accepting DTS "waiver policy" proposals to permit a station to use DTS if doing so will enable it to continue to serve its existing analog viewers who would otherwise lose

service as a result of its transition to digital service.

- We reconsider in part, *sua sponte*, the extension for "phased transitions," as described in the *Omnibus Order*, and provide more time for stations facing "unique technical challenges" to complete construction.

III. Discussion

A. Analog Service Terminations

4. As discussed in detail in the *Omnibus Order*, we revised our analog service termination and reduction procedures⁸ to require stations that have not terminated analog service⁹ to file a binding notice of their proposed analog service termination date by March 17, 2009.¹⁰ In this Section, we discuss the implementation of the Analog Service Termination Notification form, which must be filed by every station that did not terminate analog service on or before February 17, 2009. We conclude that stations filing to terminate analog service prior to June 12, 2009, may not specify a date earlier than April 16, 2009, except in the case of a noncommercial educational station ("NCE") facing significant financial hardship, and may not change the date they select to any other early (*i.e.*, pre-June 12) termination date barring equipment failure, natural disaster, or another unforeseeable emergency. We also adopt requirements to assure that viewers are notified of early transitions and retain access to some analog service through June 12, 2009. Finally, we adopt our proposed post-transition analog service and consumer outreach requirements for the subset of early terminators that are major network affiliates in areas where all major

⁸ We make no amendments to the Pre-Transition Digital Termination procedures adopted in the *Third DTV Periodic Report and Order*. *Third DTV Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket 07-91, Report and Order, 23 FCC Rcd 2994, 3045, para 133. (*"Third DTV Periodic Report and Order"*.)

⁹ Although the *Omnibus Order* referred to "all" stations, we take this opportunity to clarify that this filing requirement is limited to full-power television stations that are still broadcasting in analog (excluding analog nighttime service). Those stations that terminated analog television service on or before February 17, 2009 do not need to file this form.

¹⁰ *DTV Delay Act Omnibus Order*, FCC 09-11 at paras 26-32. 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 more than 10 percent 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.

network affiliate analog service will be discontinued prior to June 12, 2009.

5. The *Third DTV Periodic Report and Order*, 72 FR 37310 (July 9, 2007), permitted stations to transition without prior Commission approval during the final months before the transition, but they were required to make a showing with their notification to the Commission that the analog service termination was "necessary to achieve their transition." Consistent with this requirement, stations that seek to transition early must provide us with sufficient information in the Analog Service Termination Notification to enable us to determine whether an early analog termination is necessary and in the public interest. We will allow stations that notify us in a timely manner to proceed with their planned terminations without specific individual approval, with limited exceptions. As discussed in the *Omnibus Order*, 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.

6. A number of commenters oppose the Commission's decision to revise the early analog termination procedures at all, and the specific proposals made in the NPRM. In its comments, the Association of Public Television Stations ("APTS") focuses largely on the argument for permitting NCE stations to transition before April 16, which is addressed in Section II.A.4, below. APTS also argues more generally, however, that stations should be permitted to terminate at any time before June 12, because a "gradual, rolling cessation of analog works relatively well and benefits the public."¹¹ It argues that this approach provides a steady supply of information to the Commission, while minimizing viewer disruption, and that "so far it has worked."¹² Some individual stations also oppose the imposition of new requirements for early termination, even when they do not object to terminating analog service on April 16 or later.¹³ McGraw-Hill opposes the extension of viewer notification requirements beyond 30 days, arguing that longer periods of notice could "adversely

¹¹ APTS Comments at 6. See also MATC Comments.

¹² APTS Comments at 6.

¹³ KET Comments at 2-3; OSU Comments at 3-7.

impact a smooth transition” and spur increased viewer complaints to stations.¹⁴ Even where commenters do not argue that a longer notification period would create problems, they contend that a 30-day notice period, as adopted in the *Third DTV Periodic Report and Order*, is “sufficient to make viewers * * * aware of the final date for the termination of analog operations.”¹⁵ While there is less universal opposition to the proposed requirement to air crawls for seven days before analog termination, the general consensus among commenters is that the existing levels of pre-transition viewer notification are sufficient.¹⁶

7. While we appreciate broadcasters’ objections to the changes we are making in our procedures, we find it necessary to adopt new requirements and procedures associated with early transitions to assure that viewers are fully prepared and equipped to receive digital television signals and give up analog service. Our experience in preparing for the partial transition on February 17, as well as the early market-wide transitions in Wilmington, North Carolina and Hawaii, have demonstrated the importance of on-the-ground consumer outreach, the availability of coupons to defray the cost of DTV converter boxes, and the availability of the boxes themselves. Testimony in the recent Commission en banc hearings underscores the time needed by retailers, manufacturers, NTIA, pay TV services, local and national outreach organizations, and our own outreach staff to plan for both equipment availability and consumer education.¹⁷ This experience convinces us that more than 30 days are needed to plan and execute the intensified outreach efforts necessary in an area with stations transitioning early to assure consumer readiness. Indeed, more than 60 days is preferable. However, we recognize that some stations have legitimate needs to transition early and that Congress required us to balance the consumer need for time and information with the broadcaster need for flexibility.

¹⁴ McGraw-Hill Comments at 3.

¹⁵ Sunbelt Comments at 4.

¹⁶ See, e.g., Barry Comments at 4, note 1 (proposing to air 30 days worth of notices before transitioning on April 16); see also, Joseph Belisle Comments (“It is a mistake to adopt onerous, endless, unworkable procedures for early termination of analog television service.”).

¹⁷ Written testimony of Cathy Seidel, Bureau Chief, Consumer and Governmental Affairs at 6–7; Written testimony of Eloise Gore, Associate Bureau Chief, Media Bureau at 3; Mark Lloyd, Vice President for Strategic Initiatives, Leadership Conference on Civil Rights and Leadership Conference on Civil Rights Education Fund at 5.

Therefore, we adopt the procedures and requirements described here to implement this balanced approach.

8. For stations that elect to transition on June 12, the final day of the transition, we impose no additional requirements for viewer notification. Stations that will transition early may do so on the day of their choosing; they must, however, run daily viewer notifications for 30 days prior to transitioning, as required under the *Third DTV Periodic Report and Order* early termination procedures, containing the information described in this Order. Additionally, as discussed in detail below, affiliates of ABC, CBS, FOX, and NBC (“major network affiliates”) that are transitioning early must either (1) certify that at least one major network affiliate will continue to provide full analog service to their viewers through June 12, 2009, or (2) certify that their viewers will receive some continuing “enhanced nighttime” analog service, and that they will operate or support and publicize a walk-in help center and a consumer referral telephone number, and provide certain specific information about the transition in the on-air and other DTV educational efforts they undertake. These requirements are very similar to those we imposed on many major network affiliates that transitioned early on February 17, 2009. We conclude that these requirements are necessary and appropriate to implement the DTV Delay Act’s provisions and carry out its purposes. They retain stations’ flexibility to choose a transition date prior to June 12, while also addressing the needs and helping to ensure the readiness of viewers in their markets. We also retain the right to revise any station’s proposed early termination if we find it in the public interest to do so.

1. Statutory Authority

9. We reaffirm our conclusion that the Commission has authority to modify the *Third DTV Periodic Report and Order’s* early termination procedures as necessary to implement and carry out the purposes of the DTV Delay Act.¹⁸ In their joint comments, NAB and MSTV (“NAB”) and others disagree with that finding, arguing that Section 4(a) of the Act plainly requires that broadcasters be allowed to cease analog broadcasting under the procedures “in effect on the date of enactment of this Act,” and prevents the Commission from modifying those procedures.¹⁹ On the

¹⁸ *Omnibus Order*, FCC 09–11 at para 30.

¹⁹ DTV Delay Act sec. 4(a). See NAB and MSTV Joint Comments at 17–20 (“NAB Comments”); APTS Comments at 2–4; Richard B. Brittain

contrary, we conclude that Section 4(a) is ambiguous and reasonably can be interpreted to ratify the termination procedures that were in effect on the date of enactment of the Act without restricting the Commission’s authority to modify them.²⁰

10. Based on examination of the Act’s text, legislative history, and structure, we cannot conclude that Section 4(a) plainly expresses Congress’s intention to restrict FCC authority to modify its early termination procedures. Section 4(a) states that:

[n]othing in this Act is intended to prevent a licensee of a television broadcast station from terminating the broadcasting of such station’s analog television signal * * * prior to the [transition deadline] so long as such prior termination is conducted in accordance with the Federal Communications Commission’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*].²¹

NAB maintains that this language “specifically allows stations to cease analog broadcasting under the existing requirements.”²² Although NAB’s reading may be plausible, we do not agree that it is the only or even the most reasonable interpretation of the statutory text. The text clearly disavows any Congressional intent to override the Commission’s existing termination procedures. It is silent, however, regarding whether the Commission may change those procedures. Had Congress intended to give broadcasters an affirmative right to terminate analog transmissions early in accordance with the procedures established in the *Third DTV Periodic Report and Order* and prevent the Commission from changing those procedures, it could easily have done so. Congress certainly knew how to use broad “notwithstanding” language, as it used such language elsewhere in the DTV Delay Act.²³ We

Comments; KET Comments at 5, 8–9; OSU Comments at 6; ZGS Comments at 4.

²⁰ See generally *Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044, 1049 (D.C. Cir. 1997) (Under the *Chevron* doctrine, if a statute is silent or ambiguous as to the precise question at issue, then a reasonable agency interpretation of the statute merits judicial deference).

²¹ DTV Delay Act sec. 4(a).

²² NAB Comments at 18.

²³ DTV Delay Act sec. 4(c) (“[n]otwithstanding any other provision of law, the Federal Communications Commission * * * shall, not later than 30 days after the date of enactment of this Act, * * * adopt or review its rules, regulations, or orders to take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act.”). Cf. *Central Bank of Denver v. First Interstate Bank*, 511 U.S. 164, 176–77 (1994) (although “Congress knew how to impose aiding and abetting liability when it chose to do so,” it did not use the words “aid” and “abet” in the statute, and hence did not impose aiding and abetting liability).

believe that the use of narrower language in Section 4(a) signals a more modest disavowal of intent to override existing procedures.

11. Contrary to NAB's argument, neither Section 4(a)'s title ("Permissive Early Termination Under Existing Requirements") nor the legislative history make plain the meaning of the statutory text; the title is only "a short-hand reference to the general subject matter involved,"²⁴ and the two floor statements cited by NAB merely indicate the expectation that broadcasters would be allowed to terminate early, without mentioning a freeze or other limitation on FCC authority.²⁵ Further, the Act's structure does not support NAB's reading. On the contrary, rather than restricting the agency's general rulemaking authority, Section 4(c) grants the Commission expansive new authority.²⁶ We find it difficult to square NAB's crabbed reading of Section 4(a) as enshrining the FCC's existing termination procedures with Section 4(c)'s grant of expansive new authority to implement the DTV Delay Act and carry out its purposes.²⁷

12. Considering the DTV Delay Act's text, legislative history and structure, and consistent with Supreme Court precedent, we have concluded that Section 4(a) ratifies the *Third DTV Periodic Report and Order's* early termination procedures without restricting the Commission's authority to modify those procedures.²⁸ We

²⁴ *Trainmen v. Baltimore & Ohio Railroad*, 331 U.S. 519, 528 (1947) (titles of acts or sections can provide only limited interpretive aid).

²⁵ See NAB Comments at 18 n.39, citing Statement of Rep. Boucher, Cong. Rec. H585 (Jan. 27, 2009) ("[w]e fully anticipate that the FCC will be very flexible in applying" the provision allowing stations to cease analog broadcasting early); Statement of Sen. Hutchinson, Cong. Rec. at S1051 (Jan 29, 2009) (explaining that the delay of the DTV transition date "is voluntary," which "was very important" because "many broadcast companies have made the investment for digital transmission" and the bill allows them "to go" digital). To the extent that NAB suggests that the FCC's modifications of the early termination procedures deprive broadcasters of the flexibility that Congress intended, we disagree for the reasons set forth elsewhere in this Order and our previous Order. We believe that our actions afford stations the flexibility that they need to choose a termination date prior to June 12 while also taking into account the needs and readiness of viewers in their markets.

²⁶ DTV Delay Act sec. 4(c) (authorizing the FCC "[n]otwithstanding any other provision of law" 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.").

²⁷ *Verizon California, Inc. v. FCC*, 2009 WL 304745 (D.C. Cir. 2009) (context and purpose of statute properly considered in determining meaning).

²⁸ *DTV Delay Act Second Report and Order and NPRM*, FCC 09-11 at para 30 n. 59 and accompanying text, citing *Zemel v. Rusk*, 381 U.S.

remain persuaded that this interpretation is the most reasonable one. As discussed above, we think that Section 4(a) is most reasonably read as a disavowal of intent to override the Commission's early termination procedures then in effect. Had Congress not ratified those procedures, the DTV Delay Act could be interpreted to prohibit early termination altogether, for its purpose arguably would be undermined if most broadcasters chose to terminate before June 12.²⁹ We reject NAB's argument that our construction prefers Section 4(c)'s general terms over Section 4(a)'s specific ones.³⁰ Rather, our reading harmonizes and gives full effect to both Section 4(a) and Section 4(c), which reflects Congress's recognition that implementing the DTV Delay Act and carrying out its purposes within the short time available "would require extraordinary and immediate action by the Commission and others."³¹

2. Analog Service Termination Form

13. In the *Omnibus Order*, we required all full-power television stations that had 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, 2009.³² We imposed this requirement because we have found that the opportunity for advance planning contributes significantly to a smoother transition. We now announce that this notification must be made via the Commission's Informal Filing Form

1, 9-13 (1965) (Secretary of State had statutory authority to impose new area restrictions on passports in 1961 under the Passport Act of 1926 because Congress had ratified the Secretary's authority to impose such restrictions in 1952 by enacting passport legislation without tampering with the rulemaking authority granted to the Secretary in the 1926 Act), and *City of New York v. FCC*, 486 U.S. 57 (1988) (Congressional ratification of FCC preemption of state and local cable technical standards). None of the comments specifically address the Commission's reliance on ratification precedents in the *DTV Delay Act Second Report and Order*.

²⁹ Cf. *Omnibus Order and NPRM*, FCC 09-11 at para 1 ("In the DTV Delay Act, Congress extended the DTV transition deadline from February 17, 2009 to June 12, 2009 in an effort to provide consumers additional time to prepare for the transition from analog to digital broadcasting."), citing Cong. Rec. H895 (daily ed. Feb. 4, 2009).

³⁰ NAB Comments at 18-19.

³¹ *Omnibus Order and NPRM*, FCC 09-11 at para 69. Finally, we note that NAB's argument that modification of FCC procedures is not permissible simply because sec. 4(a) does not expressly foreclose it, NAB Comments at 19, is inapposite because we do not rely on sec. 4(a)'s silence for authority here. As explained above, we have both general rulemaking authority and expansive new authority under sec. 4(c) of the DTV Delay Act.

³² *Omnibus Order*, FCC 09-11 at para 26.

after the release of this Order, but not later than 5:30 PM Eastern Daylight Time on March 17, 2009.³³ In this notification (the "March 17 filing"), stations must commit to terminating on a date no earlier than April 16, 2009,³⁴ to give all parties at least 30 days from the notification date to prepare and educate consumers. Any station that does not properly file this notification 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.

14. The analog termination advance notice procedures adopted in this proceeding supersede the provisions of Section 73.1615.³⁵ Stations may rely on the provisions of Section 73.1615 for brief terminations or reductions of service for technical reasons. They may not, however, rely on this provision to terminate analog service altogether, even in the days immediately prior to June 12, 2009. Barring Commission action, a station may only terminate analog service on the date it elects to do so on the analog service termination form.

15. We impose no requirements in this section on stations that notify the Commission of their intent to continue providing full analog service³⁶ until June 12, 2009.³⁷ Continuing to broadcast in analog will give the viewers of these stations the maximum possible opportunity to prepare for digital broadcasting. The Commission recognizes the central importance of this goal; therefore, stations that file an analog service termination form to elect

³³ Notice to the Commission must be provided electronically through the Commission's Consolidated Database System ("CDBS") using the Informal Application filing form. To access the CDBS electronic filing system in order to file an analog termination or reduction notification, go to the Media Bureau's Web site at: <http://www.fcc.gov/mb/cdbs.html>. Instructions as to how to file these notifications are as follows: After logging into the CDBS, select the last option from main menu "Additional non-form Filings." From the next menu select "Silent STA/Notification of Suspension." From the pre-form menu select: "Notification of analog termination or reduction." No fee is required. For additional information, contact Hossein Hashemzadeh, Hossein.Hashemzadeh@fcc.gov, of the Media Bureau, Video Division, at (202) 418-1658.

³⁴ But see Pre-April 16 Terminations by Noncommercial Educational Stations Certifying Significant Financial Hardship, *infra*.

³⁵ 47 CFR 73.1615.

³⁶ For the purposes of this Order, we define "full" analog service or programming to mean the normally scheduled programming that the station aired prior to transitioning to digital-only broadcasting.

³⁷ All stations must conform to the DTV Consumer Education Initiative rules, however, including those adopted in this Order, unless they are specifically exempted from doing so.

an early transition date may later revoke this notification and delay their transition to June 12, 2009. This revocation filing may be submitted at any time up to five days prior to the elected transition date, although a shorter notice period is permissible in the case of equipment failure, natural disaster, or other unforeseeable emergency. In filing such a revocation, a station must certify that continuation of full analog service will not result in interference to the signal of any other station that has been approved to commence early post-transition operations. It must also certify that it will provide notice to viewers of this revocation at least four times daily, with at least one notice in primetime, over the five days prior to and including the day it originally elected to terminate analog service.

3. Early Analog Service Termination Viewer Notifications

16. Pursuant to the *Third DTV Periodic Report and Order*, stations that transition early are required to provide additional viewer notifications in order to ensure that their viewers are prepared.³⁸ In that Order, we required that stations provide viewer notifications for at least 30 days prior to their termination of analog service, and we retain that requirement here. These notifications must air at least four times a day, including at least once in primetime, for the 30-day period prior to the planned service reduction or termination. They must include: (1) The station's call sign and community of license; (2) the fact that the station is planning to reduce or terminate its analog operations before the transition date; (3) the firm date of the reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received;³⁹ (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, e-mail address (if available), and phone number of the station where viewers may register comments or request information. In addition to the requirements described in the *Third DTV Periodic Report and Order*, stations terminating early must also provide service loss information, pursuant to Section III.C.2, below, if that section would require notice to viewers. As

³⁸ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3050, para 117.

³⁹ Alternatively, the notification could describe how to get service from another station affiliated with the same network if the station's digital signal will not cover the entire area that is within the station's Grade B analog contour.

noted throughout this Order, these notifications are in addition to the requirements of the *DTV Consumer Education Initiative* rules, including those adopted in this Order.⁴⁰

17. We also asked in the NPRM whether we should require major network affiliates, or even all stations, that terminate analog service prior to June 12 to run seven days of hourly crawls, as we required of stations that terminated on February 17, 2009.⁴¹ NAB opposed this requirement, arguing that 30 days of notices prior to the transition will be sufficient to educate viewers ahead of time, and pointing to widespread consumer annoyance with the appearance of the crawls during programming.⁴² We agree with NAB that there is no need for additional pre-termination notifications in the form of crawls. When stations terminated on February 17, there was an extremely short period of time available to notify viewers of the impending change. The DTV Delay Act was enacted on February 11, and the extensive news coverage may have led many viewers to believe that they did not need to prepare for the digital transition, even if one of their local stations was going to transition six days later. With only six days, there was no way to run notices for thirty days. As a result, we found that an extremely intensive educational effort for the short period remaining was the only way to reach viewers as completely as a long term notice campaign. Now, stations will have time to run the full thirty days of viewer notifications.⁴³ Under the present circumstances, we conclude that there is no need for additional pre-termination notifications in the form of crawls.

4. Pre-April 16 Terminations by Noncommercial Educational Stations Certifying Significant Financial Hardship

18. We will allow NCEs to terminate analog service before April 16, if such termination is necessary as a result of significant financial hardship. Stations must certify in their analog termination form (described above) that they need to terminate before April 16 due to significant financial hardship and must comply with the viewer notification requirement. NCEs making this certification may terminate before April 16, but not before March 27.

19. In the NPRM, we tentatively concluded that stations may terminate

⁴⁰ The revisions to our rules are shown in the regulatory text to this document.

⁴¹ *February 5th PN*.

⁴² NAB Comments at 22.

⁴³ Certain noncommercial stations, discussed, *infra*, may not have the full 30 days.

no earlier than April 16, 2009, so that stations terminating analog service early could adequately prepare and educate their viewers. We received several comments, including from APTS and many NCE stations, asking for permission to terminate before April 16, asserting significant financial hardship.⁴⁴

20. The Commission has consistently recognized that NCE stations face unique financial difficulties and has afforded them additional flexibility to assist them in making their transition.⁴⁵ APTS notes that many NCE stations continued broadcasting in analog after their planned termination date of February 17 at the Commission's urging, with the expectation that they would be able to terminate soon thereafter.⁴⁶ We are also sensitive to the "unplanned expenses" (such as costs for electricity, equipment maintenance, additional tower rent, renegotiating tower leases, rescheduling tower crews and storing new equipment until it can be installed) which are incurred by stations keeping analog transmitters on the air after their originally planned termination dates.⁴⁷ Although all stations may face such unplanned expenses, they are likely to fall particularly hard on NCE stations because of their unique financial difficulties, such as their reliance on government funding. We are aware that NCEs, unlike commercial stations, may have budgetary restrictions that prevent them from obtaining additional funding to address these expenses.⁴⁸

⁴⁴ See APTS Comments at 2-5; see also WPT Comments at 2 (saying the following stations need to terminate early [April 5] due to "drastic technical and financial pressures": WHLA-TV, WHRM-TV, WHWC-TV, and WPNE(TV), WHA-TV); St. Lawrence Comments at 2 (saying the following stations need to terminate early [March 15] due to a "severe budgetary crisis": WPBS and WNPI); WQED at 2 (saying that WQED needs to terminate early [April 1] because of a "severe budgetary crisis"); WJCT Comments at 2 (saying WJCT is "facing severe economic constraints" and needs to terminate early [April 6]); MSU Comments at 2 (saying KOZK and KOZJ planned to terminate analog early [April 2] to address "serious financial and equipment considerations").

⁴⁵ For example, in the *Third DTV Periodic Report and Order*, the Commission afforded NCE stations a reduced service requirement if their circumstances warranted this additional flexibility. See, e.g., *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3041, para 97; and *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311-18319, paras 80-87. In addition, NCE stations received a later use-or-lose deadline in the *Second DTV Periodic Report and Order* and, in the *Fifth Report and Order*, we noted the unique financial difficulties faced by NCE stations and reiterated our view that these stations warranted additional flexibility. *Fifth Report and Order*, 12 FCC at 12852, para 104.

⁴⁶ APTS Comments at 5.

⁴⁷ *Id.* at 4.

⁴⁸ See, e.g., Mid-South Comments at 2 (facing a 15 percent cut in state funding); WNPYBA

Accordingly, we will permit NCE stations to terminate analog service prior to April 16, and as early as March 27, provided they comply with the viewer notification requirement, discussed below. We find that stations may not terminate analog service without notifying viewers on air for at least 10 days prior to termination, except in the case of equipment failure, natural disaster, or other unforeseeable emergency. We will not, however, reinstate analog termination notifications filed with the Commission under the prior procedures, nor will NCE stations' comments filed in response to the NPRM satisfy the March 17, 2009 notification requirement.⁴⁹ NCE stations must file their binding analog service termination notification by March 17, 2009.⁵⁰ NCE stations terminating on or after April 16 should follow the analog termination procedures discussed above.

21. *Viewer Notification Requirement.* We require NCE stations that need to terminate analog television service before April 16 to broadcast the equivalent of 30 days' worth of viewer notifications regarding the station's imminent termination of its analog service.⁵¹ We find that this viewer notification requirement is necessary to protect viewer expectations and to carry out the purpose of the analog termination procedures. The 30 days' worth of viewer notifications must include the information discussed above.⁵² To comply with this requirement, stations must adequately and clearly communicate the required information, and make particular note

that the date on which the station is terminating is prior to the new nationwide date of June 12, 2009.

5. Early Analog Service Terminations by Major Network Affiliates

22. As we discussed in the *February 11th* PN, the early analog terminations of certain stations poses a significant risk of substantial public harm.⁵³ The presence of ABC, CBS, FOX, and NBC network stations and affiliates in a market is critical to ensuring that over-the-air viewers have access to local news and public affairs, because these "major network affiliates" are the primary source of local broadcast news and public affairs programming in most communities. No commenter disagreed with this point. Indeed, while some commenters, including NAB, opposed additional early termination requirements as a general matter,⁵⁴ no commenter specifically objected to imposing such additional requirements on major network affiliates that transition early. We will allow major network affiliates to terminate analog service prior to June 12 under the following conditions that ensure fulfillment of their public interest responsibilities. First, as discussed above, they must identify the date on which they plan to transition in their March 17 notification to the Commission. Second, major network affiliates must certify either that at least 90 percent of the population in their Grade B analog contour will receive full analog service from another major network affiliate until June 12, 2009, or that they will comply with the additional public interest related conditions. The additional public interest conditions are necessary to ameliorate any potential harms of early termination by assuring that viewers who will lose regular analog service from all of their major network affiliates before June 12 will continue to have some essential analog service through June 12 and will have access to local

assistance from their stations no later than the time that the last major network affiliate terminates full analog programming.

23. A major network affiliate which cannot certify that 90 percent of its viewers will receive full analog service from another major network affiliate through June 12, 2009, but wishes to terminate early, must certify in its March 17 filing that: (1) At least 90 percent of the population in its Grade B analog contour will receive some major network affiliate analog service (enhanced nightlight or some combination of full service and enhanced nightlight)⁵⁵ until June 12, 2009; and (2) it will comply with the other public interest conditions described below.⁵⁶ The station's enhanced nightlight and public interest obligations begin when more than 10 percent of the population in the station's Grade B analog contour no longer receives analog service from a major network affiliate, if that day is before June 12. Under most circumstances, this will be the day on which the last major network affiliate in a market terminates analog service early.

24. As discussed in more detail below, the "90 percent served" condition will help to ensure that a major network affiliate's early termination does not pose a significant risk of substantial public harm because most viewers will continue to receive some analog service, and the public interest conditions carry out the DTV Delay Act's purposes by facilitating consumer readiness in communities where the primary sources of local broadcast news and public affairs programming are all terminating early. Any major network affiliate that properly certifies may terminate on its chosen date without the need for action by the Commission.⁵⁷ A major network affiliate that does not: (1) Certify that a major network affiliate will provide full analog service to at least 90 percent of the population in its service area; (2) certify that it will comply with the public interest related conditions (including the analog service requirements); or (3) demonstrate extreme technical or financial difficulties by filing a showing of extraordinary exigent circumstances; must continue providing full analog

Comments at 2 (facing a 50 percent cut in state funding); and APTS comments at 5 ("Requiring stations to continue analog transmissions for a month or more beyond what they had budgeted would have profound negative implications on their financial futures.")

⁴⁹ *Omnibus Order* at, para 26.

⁵⁰ *Implementation of the DTV Delay Act*, MB Docket No. 09-17, Second Report and Order and Notice of Proposed Rulemaking, FCC 09-11, para 26 (rel. Feb. 20, 2009).

⁵¹ Notifications must be aired 120 times, on a daily basis, including 30 times in primetime, distributed evenly during the 30-day period. Therefore, if the viewer notifications begin, for example, 10 days before the station's termination, the station must broadcast notifications 120 times, including 30 times in primetime, distributed evenly during the 10-day period; *i.e.*, the station must broadcast notifications every day on-air at least 12 times a day, including at least three times in primetime, for the 10-day period.

⁵² We note that these viewer notifications are in addition to, and separate from, the notification requirements established in the Commission's *DTV Consumer Education Initiative* proceeding. See *DTV Consumer Education Initiative*, MB Docket No. 07-148, Report and Order, 23 FCC Rcd 4134 (2008); Order on Reconsideration and Further Notice of Proposed Rulemaking, 23 FCC Rcd 7272 (2008) (collectively, "*DTV Consumer Education Orders*").

⁵³ *February 11th* PN.

⁵⁴ NAB focused on the importance of flexibility, which is retained by our procedures, and objected to the imposition of additional pre-transition viewer notification obligations for early terminators, which we declined to impose. In particular, NAB focused on the dangers of viewer fatigue as a result of additional on-air early transition notifications. NAB Comments at 21, 22, 24. The obligations on major network affiliates all apply after termination of their analog signal, and more to NAB's point about viewer fatigue, do not require any on-air notifications to digital viewers. The major networks or major network affiliates that filed comments with the Commission either had no comment about these requirements, or supported them. [FOX, Lima, Griffin, no comment; McGraw-Hill "generally supports the procedures proposed in the NPRM for binding early analog terminations."]

⁵⁵ See definition of Enhanced Nightlight, *infra*.

⁵⁶ These public interest conditions are based on the requirements established in the *February 11th* Public Notice.

⁵⁷ Stations that are not major network affiliates are not held to these responsibilities. The Media Bureau will issue a Public Notice listing the stations and their early transition dates as soon as possible after the certifications are submitted and reviewed.

service until June 12, 2009 (except in the case of equipment failure, natural disaster, or other unforeseeable emergency).

a. Early Terminations By Major Network Affiliates That Certify Continuing Full Analog Service by Another Major Network Affiliate

25. As discussed above, a major network affiliate may terminate early by certifying that at least 90 percent of the population within its Grade B analog contour will continue to receive full⁵⁸ analog service through June 12, 2009, from a major network affiliate. We note that this need not be a single other major network affiliate,⁵⁹ so long as 90 percent of the population is receiving full analog service from some major network affiliate.⁶⁰ Although such a station incurs no additional obligations, it must comply fully with the requirements imposed on all stations that terminate early: To file and update the Analog Service Termination Notification form, as discussed in Section III.A.2, and to air 30 days of viewer notifications, as described in Section III.A.3. Although the filing station must list, in the March 17 filing, the stations it will rely upon to provide the requisite level of service, each station is individually responsible for ensuring that the required percentage of its own analog viewers actually receive the required level of service.⁶¹

b. Early Terminations By Major Network Affiliates That Certify Compliance With the Public Interest Related Conditions

26. If a major network affiliate cannot certify that full analog service will be provided by some major network affiliate to at least 90 percent of the population in its Grade B contour through June 12, 2009, then it must certify that there will be some analog service to 90 percent of the population in its Grade B contour through June 12, 2009, and that it will comply with the

additional conditions below. Analog service, for this purpose, may be “enhanced nightlight” service, as defined below, or some combination of enhanced nightlight and full service analog programming from a major network affiliate (when the full service analog programming is not available to at least 90 percent of population in the station’s Grade B analog contour). Either of these will ensure continuing access to local news, public affairs and emergency information, as well as DTV educational information, for any viewer who has not yet transitioned. Any major network affiliate that is certifying in order to terminate analog service early must include with its filing a list of the stations that will, individually or collectively, continue to provide such analog service to at least 90 percent of its analog viewers through June 12, 2009.⁶² Stations may cooperate to share responsibility for providing the required level of analog service, but each station is individually responsible for ensuring that its own analog viewers receive the required level of service.

27. Major network affiliates must certify in the March 17 filing that they will comply with these other public interest conditions if more than 10 percent of the population in their Grade B service contour will lose full analog service from all major network affiliates before June 12. These obligations must be undertaken so that they are in place and operating no later than the day on which more than 10 percent of the population in their Grade B service contour actually do lose full analog service from all major network affiliates—usually when the last major network affiliate in the market terminates full service analog programming. The requirements for “Walk-In Help Centers” and “Consumer Referral Telephone Numbers” contemplate collective effort, in a market where more than one broadcaster has certified compliance with the conditions, but we remind major network affiliates who certify compliance that they are each individually responsible for ensuring

that collective efforts are compliant, and individually liable if they are not. We expect that major network affiliates and other stations serving the same viewing area will closely coordinate if they intend to terminate analog service before June 12, 2009. While we applaud and encourage coordination among broadcasters serving the same area within a market, we emphasize that broadcasters that continue providing full analog service to at least 90 percent of the population in their analog service area through June 12, 2009, are not responsible for compliance with any of the requirements associated with early termination, or for any shared efforts or expenses incurred by early termination stations as a result of these requirements.

28. A major network affiliate must certify to all of the public interest related conditions in the next paragraph if it intends to terminate analog service before June 12, 2009, unless some other major network affiliate will provide full analog service to at least 90 percent of the population within the terminating station’s Grade B contour through June 12, 2009. We find that these conditions are directly related to, and necessary for, the early transition of a major network affiliate if its viewers will not have access to any other major network affiliate programming. Our experience on and after February 17th demonstrates that the continuing presence of at least one major network affiliate station broadcasting in analog provides vital information to viewers concerning the transition, as well as keeping them informed of local news. Broadcasters have the primary responsibility for their viewers and have the greatest interest in assuring that their signals continue to be available to their viewers. We impose these conditions with the awareness that many broadcasters have taken and will take these actions, and more, on their own. But we are mindful of our responsibility to ensure that all broadcasters fulfill their public interest obligations as licensees and to establish a baseline of the necessary information and service for viewers in every community, particularly during this potentially disruptive transition. These conditions are based on those proposed in the NPRM, which were in turn based on those imposed on many major network affiliates that transitioned on February 17. Although the Commission will take all steps within our capacity to provide outreach and support to markets in which there will be an early transition, realistically we cannot be everywhere. And, while we intend to work with contractors and volunteer

⁵⁸ See note 36.

⁵⁹ Note that if the station is relying on (an) other major network affiliate(s), the station must confirm that the affiliate(s) relied on remain(s) able to cover at least 90 percent of the population in the station’s Grade B coverage area even if the affiliate(s) is (are) operating at reduced power.

⁶⁰ Indeed, if the major network affiliate in question is reducing rather than terminating, it may count the percentage of its full Grade B contour still served toward the 90 percent. So, if the station will continue to serve 80 percent of the population in its service area through June 12, there need only be an additional, non-overlapping, 10 percent served by another major network affiliate through June 12 in order for the station to comply.

⁶¹ Stations filing for early termination must determine and certify that the requisite analog coverage will be provided. We intend to rely on the stations’ filings to determine whether the termination is in the public interest.

⁶² In this situation, just as for other major network affiliates, the stations filing for early termination must determine and certify that the requisite analog coverage will be provided, and we will rely on their filings to determine whether the termination is in the public interest. Here too, if a major network affiliate is substantially reducing coverage but not terminating analog service altogether, it may count the percentage of its Grade B contour still served toward the 90 percent. For example, if the station will continue to serve 70 percent of the population in its service area through June 12, there need only be an additional, non-overlapping, 20 percent served by another major network affiliate’s “enhanced nightlight” through June 12 in order for the station to be in compliance.

organizations across the country, we cannot necessarily have all of these services in place for every early transition. Therefore, we find it reasonable and appropriate that the major network affiliates that choose to transition early, leaving their viewers with no access to major network affiliate programming, take on some of the on-the-ground responsibility to support and assist their viewers through the walk-in help centers, consumer referral telephone numbers, and other public interest conditions described here.

29. Based on our experience and informal questions from stations affected by these requirements during the February 17 transition, we have reorganized the requirements and provided additional detail, as follows:

Certification Regarding Continuing Analog Service

- At least 90 percent of the population in the station's Grade B analog contour will continue to receive some analog service, until June 12, 2009, in the form of "enhanced nightlight" service (described below), or some combination of enhanced nightlight and "full" analog service from a major network affiliate.⁶³ Note that if the certifying station is relying on one or more other major network affiliates, the station must confirm that the affiliates relied on remain able to cover at least 90 percent of the population in the station's Grade B coverage area even if the affiliates are operating at reduced power.

- "Enhanced nightlight" service constitutes the broadcast, by a major network affiliate, of an analog signal providing, at a minimum, DTV transition and emergency information, as well as local news and public affairs programming. Both DTV transition and emergency information must be accessible to the disability community (e.g., broadcast notices must have an audio component, as well as being closed or open captioned). The local news, public affairs, and other non-emergency programming are not subject to the programming restrictions of the Analog Nightlight Act, and as such may include commercial advertising.⁶⁴

⁶³ For example, combined coverage can be provided by a major network affiliate that is not transitioning early, but that does not provide full analog service to at least 90 percent of the population in the certifying station's Grade B analog contour. We note that if some combination of major network affiliates provide full analog service to at least 90 percent of the population in the certifying station's Grade B coverage area through June 12, 2009, the station is exempt from these requirements.

⁶⁴ *Implementation of Short-Term Analog Flash and Emergency Readiness Act; Establishment of*

- The DTV transition information must be provided in Spanish and English, and must include demonstrations of converter box installations and antenna setups; the location and operating hours of all walk-in DTV help centers in the market (including centers not affiliated with the station);⁶⁵ the FCC Call Center telephone and TTY numbers; the telephone number for the local or toll-free consumer referral telephone number provided by the station; and other helpful information about the DTV transition.

Certification Regarding Other Public Interest Conditions

Walk-In Help Centers

- The station, alone or together with other stations or local businesses and organizations in the market, will provide at least one location and sufficient staff for a consumer "walk-in" help center. The walk-in help center(s) must be able to: assist consumers with applying for coupons and obtaining converter boxes; demonstrate how to install and operate converter boxes; assist consumers with antenna, reception, and coverage questions; provide maps and lists of communities that may be affected by coverage issues; and serve as a redistribution point for consumers who are willing to donate coupons, converter boxes, and televisions for those in need of these items. The certification must specify whether the station will operate the walk-in help center(s) itself or rely on other organizations in the market.

- Each walk-in help center must contain (for hands-on demonstration purposes) at least one analog-only television, one coupon-eligible digital-to-analog converter box, one VCR, DVD player, or game console (to demonstrate how to hook-up such devices in conjunction with a digital-to-analog converter box), and one antenna able to receive the digital signals of the local broadcast station(s). A display area for printed literature regarding the digital-to-analog converter box coupon program, connection guides for digital-to-analog converter boxes, and guides for antenna and reception issues is also required. There must also be at least one computer with an Internet connection so that consumers can, among other things, apply online for converter box

DTV Transition "Analog Nightlight" Program, MB Docket No. 08-255, Report and Order, FCC 09-2 (rel. Jan 15, 2009) ("Analog Nightlight Order").

⁶⁵ The Commission will publicize the location and hours of local walk-in centers via our Web site at <https://dtvsupport.fcc.gov/dtvtools>, using the detailed data provided by stations.

coupons and view coverage maps for broadcast stations in their area. The walk-in help center must also have a DVD player attached to a TV that is not being used for setup demonstrations, so that consumers can view educational videos regarding installing a converter box and videos regarding antennas, reception, and coverage issues.

- The staff at the walk-in help center must be prepared to demonstrate the use of the equipment on site; to provide information about any service losses for viewers of local stations; to assist viewers with accessing DTV transition information online; and to assist them with their personal equipment if they bring it to the center.

- At least one walk-in help center must be open every day from at least 12 p.m. (noon) to 8 p.m. for the first 21 days this requirement is in effect, and between the hours of 4 and 8 p.m. on Fridays, and 10 a.m. to 4 p.m. on Saturdays and Sundays, thereafter. This requirement terminates on June 12, 2009. There must be at least one broadcast station employee, from any participating station, on-site at all times during the operating hours of the center.

Consumer Referral Telephone Numbers

- The station must provide a local or toll-free consumer referral telephone number to the Commission, and must staff this number with personnel that can answer complex viewer questions, particularly about reception. This will serve to supplement the Commission's national call center. The certification must specify whether the station's referral number will be staffed by the station itself or if the station is relying on another entity or entities to respond to consumer calls and referrals.

DTV Education and Outreach

- No later than 30 days prior to its analog termination, the station will provide the Commission with the following information: the address and operating hours of the Walk-In Help Center, and the phone number and operating hours applicable to the consumer referral telephone number, that the station will be relying on to meet these obligations, as well as the name and phone number of the station's point of contact for these issues. This information will be submitted by way of an update to the Analog Service Termination Notification.

- Each station is encouraged to coordinate with and use community resources to provide off-air consumer outreach and support, including in-home assistance and other helpful information about the DTV transition.

30. We recognize that there may be extreme technical or financial circumstances that prevent some major network affiliates subject to the certification requirements from certifying that they and/or the other stations in their market will provide continuing analog service.⁶⁶ In such cases, these licensees may make an alternative showing to the Commission that extraordinary, exigent circumstances, such as the unavoidable loss of their analog site or extreme economic hardship, require that they terminate their analog service on their proposed date but prevent them from providing enhanced nighttime service for their analog viewers.⁶⁷ This showing must also include information regarding analog service that will be available for the station's viewers after the station terminates its analog service.⁶⁸ The showing should not exceed five (5) pages, not including attachments. Stations attempting to make this showing bear a heavy burden of proof. Absent technical impossibility, any station electing to make this showing must await a determination by the Commission that its showing is sufficient before terminating analog service. The Commission will endeavor to resolve all of these cases as soon as possible prior to the stations' proposed termination dates.

31. We also retain the right to prevent any station from going forward with their proposed early termination if we find it in the public interest to do so. For example, we may need to adjust the timing of some stations' or some markets' transition plans if multiple markets intend to transition simultaneously, because this could severely strain the resources of the Commission and others working to ensure full consumer preparedness. As the Commission did in the case of stations seeking to terminate on February 17, we will expeditiously provide public notice if any station will

⁶⁶ We anticipate that no station will have difficulty complying with the Walk-In Help Center, Consumer Referral Telephone Number, and DTV Education and Outreach obligations, but that continuing analog service may pose a significant challenge for stations facing extraordinary exigent circumstances.

⁶⁷ Pappas Broadcasting has asked that all flash cut stations be exempt from the early transition requirements due to the technical limitations they face. We invite such stations to make the alternative showing, if they believe these limitations constitute extraordinary exigent circumstances. Pappas Comments at 3.

⁶⁸ For example, a network affiliate might partner with another station serving the same area to ensure that its viewers may view local news, public affairs and emergency information. Some network affiliates transitioning on February 17 partnered with local NCEs to provide local news programs, which the NCEs aired without commercials.

not be permitted to transition on its elected early transition date.

B. Time of Day for Analog Service Termination

32. We find that it is appropriate to permit all stations the flexibility to terminate analog service at any time of day on the date they terminate analog broadcasting. As noted in the *First DTV Delay Act Order*, full-power stations' analog licenses expire at 11:59:59 p.m. local time on June 12, 2009.⁶⁹ Stations may continue analog broadcasting after 11:59:59 p.m. local time only to the extent that they are participating in the Analog Nightlight program.⁷⁰ However, the DTV Delay Act and the other relevant statutory provisions are silent as to the time of day on June 12, 2009, at which analog termination must occur. We do not believe it is necessary to treat analog termination on June 12 but prior to 11:59:59 p.m. local time as an "early" termination and leave it to stations to determine what time of day is most appropriate for their viewers.⁷¹ While stations have the flexibility to transition at any time, we understand that some stations that have already transitioned experienced difficulties (e.g., coordination with local cable operators) that were more easily addressed during daytime hours. Stations must inform the Commission of the approximate time of day they plan to terminate when they file their analog service termination notification,⁷² and must notify viewers through their required PSAs, crawls and other on-air consumer education if they are planning to end analog service before 11:59:59 p.m. local time on their final day of service. We also extend flexibility to stations that are transitioning early to do so at the time of day most appropriate for their viewers.

C. DTV Consumer Education Initiative

33. As proposed in the NPRM, we amend the *DTV Consumer Education Initiative* requirements to ensure that consumers will receive the information they need to make proper preparations for the digital transition of the stations on which they rely for television service. We also eliminate post-

⁶⁹ *First DTV Delay Order*, FCC 09-9, § II.A. para 3.

⁷⁰ See *Analog Nightlight Order*.

⁷¹ We remind stations that they must obtain Commission approval for operation of a post-transition digital facility at any time prior to June 12 at 11:59:59 pm. See *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3041-58, paras 98-134 (Section V.C.); see also *February 5th Public Notice* at 2.

⁷² i.e., Early Morning (12 a.m.-6 a.m.), Morning (6:01 a.m.-12 p.m.), Afternoon (12:01 p.m.-6 p.m.), or Evening (6:01 p.m.-11:59 p.m.).

transition obligations on broadcasters to continue broadcasting DTV transition educational information via their digital signals because such viewers no longer need this information.⁷³ These adjustments to the *DTV Consumer Education Initiative* requirements are necessary to accomplish the purposes of the DTV Delay Act and are based on our experience and lessons learned in the early transitions thus far. We conclude that these amended rules strike the correct balance by requiring disclosure of both potential signal loss, where warranted, and information about antennas and rescanning, which together will enable viewers to retain access to the broadcast signals. At the same time, we eliminate unnecessary repetition of information after a station has completed its transition. This balanced adjustment to the rules is supported by our experience and the record in this proceeding.

34. Broadcasters are required to regularly provide on-air consumer education about the DTV transition.⁷⁴ The *DTV Consumer Education Initiative* offered broadcasters a choice of approaches to fulfilling this requirement: Options One or Two, available to any broadcaster, or Option Three, available only to non-commercial stations.⁷⁵ 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. In the *Omnibus Order*, we revised the rules of the *DTV Consumer Education Initiative* to conform to the delay of the DTV transition. In the companion NPRM we proposed additional revisions, which we adopt in this Report and Order. We remind broadcasters that whatever option they elected, these on-air education requirements are separate from and in addition to any viewer notification requirements associated with early analog termination notifications discussed in this Report and Order, the *Third DTV Periodic Report and Order*,⁷⁶ or any other rule or regulation.

35. Each of the revised *DTV Consumer Education Initiative* rules requires stations to be in full

⁷³ In most cases, a viewer who can see the educational message on the station's digital channel has, by definition, succeeded in making his or her own transition. Thus, only those who cannot see it would benefit from it.

⁷⁴ 47 CFR 73.674.

⁷⁵ *DTV Consumer Education Initiative*, 23 FCC Rcd at 4139.

⁷⁶ See, e.g., *Third DTV Periodic Report and Order*, 23 FCC Rcd 2994 at 3033, 3044, 3050 and 3057.

compliance no later than April 1, 2009. This is the same date that manufacturers, eligible telecommunications carriers, and multichannel video programming distributors must be in full compliance with the revisions to their respective sections, adopted in the *Omnibus Order*.⁷⁷ We note that stations will not be expected to address any of the revised requirements of this Order in their first quarter DTV Quarterly Activity Station Report (Form 388), and therefore the revised Form 388 will not be available for filing until the second quarter of the year.

1. Elimination of Post-Termination Consumer Education Obligations

36. In the NPRM, we asked whether stations that participate in the post-transition statutory nightlight program should be exempt from post-transition consumer education obligations. We received a large number of comments in favor of this proposal. Responding to our request for “comment on any actions ‘necessary or appropriate to implement the provisions, and carry out the purposes’ of the DTV Delay Act” that were not resolved in the *Omnibus Order*, the majority of these comments go farther and suggest that no station should have any obligations under the *DTV Consumer Education Initiative* after it terminates analog broadcasting, or at least after every station in its market does so.⁷⁸ Most commenters on this question agree that any additional obligations for stations already transitioned to digital would cause viewer confusion.⁷⁹ Many comments argue that confusion might result, as viewers may think they need to take additional action to prepare,⁸⁰ or may question whether they will continue to be able to view the station that has already transitioned.⁸¹ Indeed, commenters argue that on-air consumer education for digital-only stations would serve only to reach those already prepared, and that such information has “no relevance or impact” for those watching a digital broadcast.⁸² Griffin

acknowledges that consumer education on digital channels may have “ancillary” benefits, but argues that they are far outweighed by the drawbacks, including cost and confusion to viewers.⁸³ Berl Brechner, President of WMDT, Salisbury, Maryland, opposes continuing DTV education requirements as an excessive burden on broadcasters who transitioned early.⁸⁴ United and NAB proposed at least limiting post-transition consumer education requirements.⁸⁵

37. After review of the comments, and consideration of our experiences working with consumers after the February 17, 2009, early transitions, we conclude that the on-air obligations for digital-only stations should be eliminated. We find that, for digital-only stations, providing on-air consumer education via digital broadcasting does not produce sufficient benefit compared to its cost, and therefore we revise our rules to permit most stations to end their participation in the Initiative after they terminate analog programming. We will continue to require stations that have not completed construction of their full authorized post-transition digital facility to continue complying with the Consumer Education requirements after they terminate their analog service until they complete construction and commence operation of their full authorized post-transition digital facility.⁸⁶ These stations must revise the content of their educational messages to provide information about the limits on station’s digital service area and the anticipated date for it to complete construction and commence operation of its full, authorized post-transition digital facility.

2. Service Loss Notices

38. As proposed in the NPRM, we amend the *DTV Consumer Education Initiative* rules to require broadcasters to inform their viewers if 2 percent or more of the population served in their analog service contour will not be served by their digital signal.⁸⁷ Stations may also broadcast information about

areas predicted to gain service, but they are required to air information about loss regardless of how many people are gaining service. As we discussed in the NPRM, our experience with stations that have already terminated analog service, particularly in those areas where an entire market has transitioned, is that loss of a station due to a change in the digital coverage area creates great consumer confusion and distress.⁸⁸ The problem is no less acute, however, for analog viewers who received analog service and are within the digital service area but who nonetheless do not receive digital service, due to changes in signal propagation associated with a change from VHF to UHF channel assignments (or vice versa) or for other technical reasons related to the use of digital transmission. Problems associated with signal loss may arise for the viewers of stations that transition at any time, up to and including June 12. Indeed, such problems may arise even before stations terminate their analog service as more and more viewers obtain digital equipment and come to rely on digital service.⁸⁹ Therefore, we will require every station that has not already terminated analog broadcasting to provide specific notice to analog viewers if 2 percent or more of the population in its Grade B analog service area is likely to lose over-the-air service from the station when it terminates analog service. We also remind stations that terminated analog service on February 17, 2009 that they are required to provide information about service losses via the enhanced analog nightlight serving their area.⁹⁰

39. Broadcasters that elected the Option One educational requirements are already required to provide information to their viewers about any “[c]hanges in the geographic area or population served by the station during or after the transition.”⁹¹ They must do so via their regularly-aired PSAs.⁹² We asked in the NPRM whether a similar requirement, but limited to population losses, should be extended to broadcasters who elected Options Two

⁷⁷ *Omnibus Order*, FCC 09–11 para 15.

⁷⁸ Griffin Comments at 5; NAB Comments at 10–13; Centex Comments at 3. We have already granted a waiver to all stations in the Wilmington market area, after that market completed its transition early. See *DTV Delay Act Omnibus Order*, FCC 09–11, para 67 (discussing the waiver). We note that we have received consumer education waiver requests from the stations in the Hawaii market, which has also fully completed its transition, but that these requests are mooted by our action in this Order.

⁷⁹ NAB Comments at 13–15; Centex Comments at 3; Griffin Comments at 2.

⁸⁰ Mt. Mansfield Comments at 3.

⁸¹ Griffin Comments at 2.

⁸² Centex Comments at 3; Mt. Mansfield at 4.

⁸³ Griffin Comments at 5.

⁸⁴ Berl Brechner Comments at 3.

⁸⁵ United Comments at 3, NAB Comments at 13–15.

⁸⁶ This requirement for continued consumer education applies, for example, to stations that have received an extension of their construction permit beyond June 12, 2009, or are operating pursuant to a “phased transition” STA which allows continued operation on a pre-transition digital channel or reduced operation on the post-transition channel. It does not apply to stations that have completed construction of their authorized post-transition facility but have not completed construction of a maximized facility. See 47 CFR 73.674(b)(3), amended as 73.674(b)(4).

⁸⁷ *NPRM* at para 64.

⁸⁸ *Id.* at para 63.

⁸⁹ This difficulty is exacerbated for consumers relying on converter boxes that do not have analog pass-through.

⁹⁰ *February 11th PN*.

⁹¹ *Consumer Education Order*, 23 FCC Rcd at 4190.

⁹² An example of such a “change to service area” notice was aired by WUTB–DT, a Baltimore, MD station, which states, in part: “Due to a slight change in the station’s transmission radius, viewers in the following areas, Southwest Talbot County, MD, Central Calvert County, MD, Southern Prince George’s County, MD, and East-Central Fairfax County, VA, may not be able to receive WUTB–DT over the air on digital channel 24.1.”

or Three. NAB does not dispute the need for service loss notices, but expressed concern about “providing too much or unnecessary information to too many viewers,” leading to a “flood” of consumer calls.⁹³ We conclude that, on balance, it is better to give viewers too much DTV information rather than too little. Although there is some information available to consumers about potential signal loss now on the internet,⁹⁴ we conclude that broadcasters are best positioned to know and communicate information about signal loss and its effects on their own viewers through the most direct and appropriate means. Without broadcaster disclosure, consumers are likely to be unaware of the potential impact of signal change or loss and the need to consult our Web site for specific information.

40. When the Commission issued its signal loss report in December 2008, we explained our findings with respect to 319 stations predicted to lose 2 percent or more of their analog viewer population after they transition to digital service. We noted that we “expect broadcasters to make this information publicly available and a part of their local DTV education efforts.”⁹⁵ It appears that few stations have heeded our expectation and disclosed losses to their viewers. Viewers in such areas will need to take action to retain access to their local stations, either by purchasing more sophisticated reception equipment or by subscribing to a pay television service. Without information from the stations whose service area is changing, consumers have no easy way to discover the potential for loss or change in service. Consumers without such information may experience not only frustration, but also unnecessary expense. For example, they may heed more general consumer education messages advising over-the-air viewers to obtain digital converter boxes, only to discover belatedly that they are unable to receive the digital signal from one or more stations in their area. Even worse, they may invest money and time in the purchase and installation of a new outdoor antenna only to learn that the digital signal will not reach their home with sufficient strength to be received and viewed. We conclude that the limited information available to consumers about service loss constitutes a substantial problem that we must

redress. Without this information, consumers will be unable to make informed decisions about how to address the service loss, such as through technical improvements to their reception system or through subscription to a paid television service.

41. We amend our rules to require all broadcasters to provide service loss information to their viewers via their existing on-air education efforts (PSAs, crawls, etc), if 2 percent or more of their analog viewers are predicted to lose service (even if the station gains viewers elsewhere).⁹⁶ We note that the Commission identified 319 stations that are predicted to have a signal loss of 2 percent or greater.⁹⁷ To date, 106 of these stations have terminated their analog service.⁹⁸ The remaining 213 must comply with the new consumer education requirement.

42. Stations subject to this requirement must provide geographically specific information describing areas of population that are covered by the Grade B analog contour but are not predicted to receive digital service. NAB argues that if a station tries to convey geographic information about areas within the digital service area but predicted to lose service, it would be “extremely confusing and inaccurate.”⁹⁹ They suggest a service loss notice should be sufficient if it contains text such as “a small percentage of current viewers using an antenna to view this analog station may have problems receiving this station’s digital signal,” and directs viewers to a commercial antenna prediction site, *antennaweb.org*.¹⁰⁰ We disagree. If broadcasters provide only the general information suggested in NAB’s comments, it would effectively undermine the goal of providing signal loss information. Moreover, the *antennaweb.org* Web site is not ideal for all consumers. It is not intended to be used to predict signal coverage, and provides little or no guidance regarding the usefulness of indoor antennas, which can work in many locations and are often the only practical option. In some cases, viewers will need to obtain new or better equipment to receive a station’s digital signal because the

analog signal was weak or poor but viewable, while the digital signal is unwatchable due to the cliff effect which results in tiling or a black screen. Viewers need the information and advice that stations are best positioned to provide so that they can make choices about how to receive the station’s signal, whether over-the-air or through a subscription service. We find that it is important that consumers be given a reasonable amount of geographically specific information through on-air spots, even if complete information cannot be contained within a consumer notice. It is also critical that consumers be given guidance on how to find more complete information, by reference to the Commission’s Web site, as well as other sources of information.

43. Of the 319 stations predicted to experience population coverage losses of 2 percent or more, 196 are a result of changes the station has made in its service area through, for example, relocating the transmitter, reducing power, or changing antenna direction. We do not mandate specific language that must be used by such stations, but stations that have shifted or reduced their coverage area must disclose the geographic areas where there is likely to be a service loss. We note, for example, that WUTB, an affiliate of MyNetwork serving the Baltimore, Maryland area, developed a signal loss PSA which provides the type of information that would be clear and helpful for viewers. It briefly and clearly discloses the parts of counties affected and advises viewers to turn to another affiliate of that network to obtain digital service over-the-air. Stations may also point out to their viewers any areas in which their over-the-air service will improve or expand.¹⁰¹ All service loss notices must direct viewers to the FCC toll-free telephone and TTY numbers and Web site for more information.¹⁰²

44. NAB supports limiting the signal loss disclosure requirement to stations with losses due to changes in service area, but Mt. Mansfield notes that many stations are predicted to lose viewers due to multiple reasons.¹⁰³ We agree. Consumers who may lose over-the-air service as a result of the change in

⁹⁶ The Commission has created a list of stations anticipated to lose 2 percent or more of their analog viewers, which can be found on the FCC Web site at <http://www.fcc.gov/dtv/markets/report2.html>.

⁹⁷ See http://www.fcc.gov/dtv/markets/DTV_Report_2.pdf.

⁹⁸ As noted here, any of these stations that are airing or participating in airing analog nightlight service must disclose and explain their signal loss as part of the DTV information component of their nightlight programming.

⁹⁹ NAB Comments at 31, note 72.

¹⁰⁰ NAB Comments at 32–33.

¹⁰¹ There may well be viewers who currently rely on subscription service who may be able to rely, instead, on free over-the-air broadcasting and thus realize one of the benefits of the DTV transition, particularly where the station offers multicast channels. See <http://www.FCC.gov/DTV/markets> (Gains significantly outweigh losses nationwide).

¹⁰² The FCC telephone number is 1–888–CALLFCC, the TTY number is 1–888–TELLFCC, and the Web site link for our address tool is <http://www.DTV.gov/maps>.

¹⁰³ NAB Comments at 31, Mt. Mansfield Comments at 2.

⁹³ NAB Comments at 31.

⁹⁴ See, e.g., <http://www.fcc.gov/dtv/markets/report2.html> on the FCC’s DTV.gov Web site.

⁹⁵ See Executive Summary at 1, http://www.fcc.gov/dtv/markets/DTV_Report_2.pdf.

frequency from VHF to UHF are entitled to be informed in advance so that they can make appropriate preparations. We recognize, however, that it may be more difficult to articulate particular areas of loss due to a frequency change, as opposed to the coverage shifts, and that more general language may therefore be appropriate. For example, a PSA could state that engineering predictions indicate that some current viewers of the station's analog signal who are located in areas obstructed by hills or buildings may not receive the station's digital signal, and direct the viewer to the FCC's telephone number and Web site for more information. The FCC can provide information about predicted signal coverage for a particular address. We also note that in some cases signal loss may be attributable to both change of coverage and change of frequency. In these cases, stations must disclose all geographically discrete locations predicted to lose service for any reason, and also include more general language about predicted losses due to obstructions.

45. The NPRM also sought comment on other means that stations could use to communicate signal loss information to their viewers.¹⁰⁴ We suggested permitting or requiring direct mail to addresses in the affected area, or through radio broadcasts and local newspapers targeting viewers who are likely to experience loss. NAB opposed requiring these other measures, noting, for example, that stations would find it difficult to develop zip codes or mailing lists, and that postage is costly.¹⁰⁵ We conclude that televised broadcasting of information is the best way for stations to be sure of reaching the affected population. Stations are permitted and encouraged to use other means, particularly radio broadcasts, if they wish, but these other measures are not required.¹⁰⁶

46. NAB argues that, while the FCC's coverage maps can be relied upon to make "an initial threshold determination of whether there would be a loss of viewership of two percent or more," stations should be given the opportunity to demonstrate through "specific engineering showings that the anticipated loss will be less than that shown on the FCC's coverage maps," and presumably as a result be exempt from the service loss notice requirement.¹⁰⁷ We conclude that the

FCC maps and coverage predictions are the basis for identifying stations that must comply with these signal loss disclosure requirements.¹⁰⁸ If our report predicts a loss of 2 percent or more, the station is required to provide signal loss information to its viewers. Stations may use their own specific engineering analysis to provide more particularized information to their viewers.

47. NAB also disputes the value to individual viewers of the general coverage maps, arguing that a consumer-focused Web site like <http://antennaweb.org> is more valuable because it provides information about a specific address and does not assume total loss of digital coverage exactly at the edge of the predicted service area.¹⁰⁹ We agree that an address-specific mapping tool is the most helpful for consumers, and have developed an online digital reception mapping tool specifically for that reason.¹¹⁰ As discussed above, we do not agree that <http://antennaweb.org> is the most useful tool for all consumers.

48. These required service loss notices may be no fewer than 30 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m., by all broadcasters with a 2 percent or greater predicted service loss. At least three times per week, they must air in primetime.¹¹¹ This requirement is in addition to and not in lieu of the other on-air informational requirements for broadcasters, but like other consumer education requirements it will expire when a station terminates analog broadcasting. This information must also appear on a station's internet home page, including a link to the online digital reception mapping tool hosted by the Commission.¹¹² This information must remain available on a station's internet home page for at least 30 days after the station terminates its analog service, notwithstanding the termination of other consumer education requirements. Because we are applying this service loss notice requirement to all analog broadcasters with a 2 percent or greater predicted service loss, regardless of the consumer education option the broadcaster chose, we will eliminate the existing service loss notice requirement currently applicable to broadcasters that elected

to comply with the Option One consumer education requirements.¹¹³

3. Antenna Information

49. We also proposed that consumer education should include information about antennas. We find that antenna information is valuable for all viewers, not only those where there is a predicted signal loss.¹¹⁴ Many viewers would benefit from a refined and enhanced understanding of the role their antenna setup plays in reception of local stations, and any actions they could take to improve reception, particularly actions short of purchasing new equipment.¹¹⁵ In addition to the general information that must be provided by all stations, if a station is changing its broadcast frequency from VHF to UHF (or vice versa), it must include information about the need for additional or different equipment to avoid loss of service.¹¹⁶ We will not require specific language, but we do not find NAB's proposed language, "using a VHF/UHF antenna will help ensure reception of all stations in your local area," sufficiently relevant for every situation. Instead, we require that each station that is transitioning between the VHF and UHF bands, in either direction, must inform its viewers of the change in frequency and remind viewers that they must have a UHF or VHF antenna, as appropriate, to receive the signal after the transition.¹¹⁷ We also proposed in the NPRM to require notices describing "areas where analog signal strength is generally sufficient for viewers to rely on an indoor antenna but where it is likely that they will need an outdoor antenna to receive the digital signal."¹¹⁸ NAB argues that there is insufficient industry consensus on how to model this situation, and that it

¹¹³ Signal loss information must also be included in the viewer notifications required of stations that are terminating before June 12, for stations covered by this section.

¹¹⁴ NAB's comments support including information about antennas in the DTV Consumer Education requirements. NAB Comments at 33.

¹¹⁵ For instance, stations that are predicted to potentially lose some analog viewers should provide guidance to viewers who could improve their ability to receive the station's signal by obtaining a different or better antenna. See <http://www.fcc.gov/dtv/markets/>.

¹¹⁶ The implementation of Major Channel Numbers as part of the Program System Information Protocol (PSIP) makes it more difficult for consumers to determine this information on their own, because a station's "channel" no longer necessarily reflects its over the air frequency. See *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3079-3082, paras 185-189.

¹¹⁷ We encourage stations to be mindful, in preparing their notices, that from the perspective of the viewer there is no change of channel number even when there is a change of frequency.

¹¹⁸ NPRM at para 64.

¹⁰⁸ See <http://www.fcc.gov/dtv/markets/report2.html> and http://www.fcc.gov/dtv/markets/DTV_Report_2.pdf.

¹⁰⁹ *Id.*

¹¹⁰ Found at <http://www.DTV.gov/maps>.

¹¹¹ See Rules Appendix.

¹¹² Found at <http://www.DTV.gov/maps>.

Consumers can also find coverage change maps relevant to their market at <http://www.fcc.gov/dtv/markets/report2.html>.

¹⁰⁴ NPRM at para 65.

¹⁰⁵ NAB Comments at 34.

¹⁰⁶ NAB notes that some stations have engaged these other measures, which should be permitted but not required, so as to reduce the burden on small stations in particular. See *id.*

¹⁰⁷ NAB Comments at 32, note 73.

therefore cannot be conveyed.¹¹⁹ We agree that specific advice as to the use of indoor or outdoor antennas can vary house by house within the same neighborhood, and, therefore, we will not require stations to include this information. We will require, however, that a station whose signal strength will be reduced in a discrete geographic area as a result of a shift by the station in its coverage area must address this reduction in their antenna information notices.

50. Antenna information could be included as part of a station's existing *DTV Consumer Education Initiative* efforts,¹²⁰ discussed during news programs, or otherwise conveyed in the manner the station determines will be most helpful to consumers. The information must be provided at least once per day, in a message lasting at least 15 seconds, with at least three of those messages per week airing during primetime.

4. Rescanning

51. As proposed in the NPRM, we will require all stations to provide information to consumers about the need to periodically rescan for channels. A digital receiver, whether it is in a digital-to-analog converter box, a digital television, or any other device, must "scan" for available broadcast frequencies before it can be used to tune and view digital television.¹²¹ Most such receivers do not automatically "rescan" for additional channels or changes in existing channels. During the time surrounding the conclusion of the transition, many stations will be changing the service areas and the broadcast channels of their digital transmissions. As a result, viewers will need to periodically rescan during this period in order to ensure that they are correctly receiving all the digital broadcast services available to them. Our experience assisting with outreach and education across the nation, however, has made it clear that this concept can be difficult to convey to viewers, particularly because digital receivers, including different converter boxes, have a variety of different rescanning procedures. This makes widespread consumer awareness of the issue crucial, so that viewers can take the steps they need to take to educate themselves or seek help from others. NAB agrees with the Commission about

the importance of educating viewers about rescanning, and is in fact preparing a public service announcement about rescanning that it will make available to all broadcasters.¹²² It suggests that stations be given flexibility in providing this information, and we agree that this is appropriate. Therefore, we will require all stations to broadcast information to consumers about the need to periodically rescan, but this information may be provided in the manner of a station's choosing. The message could be included as part of a station's existing *DTV Consumer Education Initiative* efforts,¹²³ discussed during news programs, or broadcast at another time if the station determines that will be most helpful to consumers. They must be aired at least once per day, in a message lasting at least 15 seconds, with at least three of those messages per week airing during primetime.¹²⁴

5. Consumer Referral Telephone Numbers and Publicizing Consumer Help Centers

52. We will require all stations, when filing the analog service termination notification form, to provide us with a telephone number that will serve to receive local consumer calls and consumer referrals from our national Call Center.¹²⁵ We anticipate that the FCC Call Center will be able to help most callers, for instance with converter box set-ups, the NTIA coupon program, scanning issues, access to the Commission's online mapping tool, and basic antenna guidance. Nonetheless, local stations typically are the best source of information and assistance for viewers having difficulty receiving a particular signal. In particular, where a reception issue may arise due to very localized terrain issues, a local station is in a much better position to address related concerns than the staff at the FCC's national Call Center.

53. We expect that the telephone number provided will be one that is staffed during business hours with personnel who are prepared to answer complex questions from viewers, particularly regarding necessary actions to take to get reception in specific locations, and other engineering issues. We note that stations should be

prepared for an increased volume of calls, both referred and locally originating, around important dates such as the date the station terminates analog, the date many other stations in the market terminate analog, and June 12. This telephone number may be operated and staffed by the station itself, by a group of stations in a market, or by a third party entity such as a state broadcasters' association.

54. We will also require that these telephone numbers, and any walk-in centers in the market, be publicized by each station as part of their consumer education obligations. In many markets, there may be a number of local help centers. These will include volunteer efforts, centers run by major network affiliates that are transitioning early, and potentially FCC contractors. These locally-focused efforts are among the best ways to help consumers who remain unprepared, but they are only valuable to the extent that they are made known to viewers. Therefore, we will require every station to include at least the following elements in its on-air education efforts: the location and operating hours of walk-in DTV help centers in the market; the FCC Call Center telephone number and TTY number; and the telephone number for the station's telephone number for consumer referrals and calls from local viewers.¹²⁶ Similar to the rescanning notices, this information could be included as part of a station's existing *DTV Consumer Education Initiative* efforts,¹²⁷ discussed during news programs, or broadcast at another time if the station determines that will be most helpful to consumers. The information must be aired at least once per day, in a message lasting at least 15 seconds, with at least three of those messages per week airing during primetime.¹²⁸

6. 100 Day Countdown

55. We amend Option Two of the *DTV Consumer Education Initiative* to require each station to air a 60-day countdown to its termination of analog service. As discussed above, the *Omnibus Order* required stations to begin a new 100-Day Countdown to June 12, 2009, but we temporarily waived that requirement in order to

¹²² NAB Comments at 30.

¹²³ Option One broadcasters may replace up to 25 percent of their daily PSAs and crawls with notices focused on rescanning, notwithstanding the other content requirements for Option One notices. 47 CFR 73.674(c)(3)(vi) and 4.

¹²⁴ See Rules Appendix.

¹²⁵ This telephone number for consumer referrals must be provided by March 17, 2009 on the Analog Service Termination Notification form, but may be updated as necessary.

¹²⁶ This information will be available from the Commission at our Web site, <https://dtvsupport.fcc.gov/dtvtools>, compiled using the detailed data provided by stations and third party entities.

¹²⁷ Option One broadcasters may replace up to 25 percent of their daily PSAs and crawls with this "local assistance" contact information, notwithstanding the other content requirements for Option One notices. 47 CFR 73.674(c)(3)(vi) and 4.

¹²⁸ See Rules Appendix.

¹¹⁹ NAB Comments at 33.

¹²⁰ Option One broadcasters may replace up to 25 percent of their daily PSAs and crawls with antenna information notices, notwithstanding the other content requirements for Option One notices. 47 CFR 73.674(c)(3)(vi) and 4.

¹²¹ NPRM at para 66.

consider possible revisions to ensure that the Countdown was as effective as possible in educating consumers. We asked in the NPRM how we should revise this requirement, and received a number of comments, all advocating limitations. There was complete agreement among commenters who addressed this proposal that there should be no countdown for stations that have already transitioned. In general, commenters emphasized that imposition of a 100-day countdown clock for stations that have transitioned would cause viewer confusion and would not reach those analog viewers most in need of such information.¹²⁹ NAB and Mt. Mansfield both argue that the countdown might lead digital viewers to believe they need to take further steps to prepare. United commented that the “fundamental differences” between analog and digital broadcasts warrant different consumer education tactics.¹³⁰ As discussed above, we agree with these commenters that a station need not continue DTV transition education once it has terminated analog service. NAB, however, also proposed a more nuanced and limited approach to the countdown before a station terminates analog service. They would limit all countdowns to 60 days, arguing that this will create more urgency once the countdowns begin again.¹³¹ They would permit stations that transition early to air a countdown to their own transition, and they would require stations that transition on June 12 to air a countdown to the national transition deadline.¹³² We largely agree with these proposals.

56. As discussed in the NPRM, a simple nationwide countdown was appropriate when the vast majority of stations were planning to continue analog programming until the conclusion of the transition.¹³³ Now that the transition has been delayed, however, we anticipate that an appreciable number of the roughly 64 percent of stations that did not transition on or before February 17 may transition prior to June 12. Under the circumstances, we agree with the commenters that requiring an identical and simultaneous countdown to June 12 by all Option Two stations could create confusion, and would not necessarily reach those viewers most in need of the

information.¹³⁴ Nonetheless, the countdown clock serves an important educational purpose, and stations transitioning early, in particular, need to convey the appropriate level of urgency to their viewers. This makes NAB’s proposal, which would appear to permit stations that terminate early to do so without a countdown at all, not entirely sufficient to meet the needs of consumer education. Therefore, we will require each Option Two station to run a countdown to its own termination of analog service, beginning no later than March 17, 2009 or 60 days prior to its analog termination, whichever date occurs later.¹³⁵ As a result, stations that are terminating analog on the transition deadline of June 12, 2009, will begin their countdown on April 13, 2009 (such that April 13 is day 60, and June 12 is Day Zero). Stations that transition earlier will begin counting down earlier, but will not be required to begin their countdown earlier than April 1, 2009.

7. 30 Minute Informational Videos

57. We amend the *DTV Consumer Education Initiative* rules to require Option Two and Three broadcasters that are still broadcasting in analog to air a new, up-to-date 30 minute informational video before they transition. United Communications Corporation agreed with our tentative decision not to require stations that have already transitioned to air an additional 30-minute informational video, a proposal we adopt.¹³⁶ Under the rules as revised in the *Omnibus Order*, Option Two and Three broadcasters must, on at least one day prior to June 12, 2009, air “an informational program on the digital television transition.”¹³⁷ Many, if not most, of the affected broadcasters complied with this requirement when the transition was to take place on February 17, and their informational programs necessarily reflected that date. For stations that have already transitioned, we find that such a program met the needs of their viewers. For stations that have not yet transitioned, however, we find that a

program aired before the adoption of the DTV Delay Act cannot be considered sufficiently accurate and helpful to viewers. Therefore, we will require such Option Two and Three stations to air an up-to-date 30 minute informational program before they cease analog programming.

58. NAB supports this proposal, but argues that we should not require the video to contain locally-specific information. However, we find that locally-specific information is the most important, particularly for viewers who may not have transitioned because of uncertainty regarding continuing service. Therefore, in order to serve the consumer educational purposes of the DTV Delay Act, this up-to-date 30-minute informational video must explain: (1) The change in the transition date; (2) when that particular station is transitioning; (3) when other stations in the market are transitioning; and (4) service loss issues, if any (providing the same information required by the rules adopted in section III.C.2, above).

8. Form 388

59. Finally, we revise Form 388, the DTV Quarterly Activity Station Report, to reflect the changes we have made to the *DTV Consumer Education Initiative* broadcaster rules in this Report and Order.¹³⁸ The Commission has received approval from OMB for these minor changes to the forms.¹³⁹

D. DTS Signal Loss “Waiver Policy” Extended

60. We extend until December 14, 2009 the deadline for accepting DTV distributed transmission system technologies (“DTS”) “waiver policy” proposals to permit a station to use DTS if doing so will enable it to continue to serve its existing analog viewers who would otherwise lose service as a result of its transition to digital service. In the *DTS Order*, the Commission adopted a waiver policy to enable stations to address the type of loss experienced by WECT, Wilmington, NC (channel 6), where many analog viewers of that station lost service when the station transitioned to digital-only operations. The Commission permitted a station to use DTS if doing so will enable it to continue to serve its existing analog viewers within its analog Grade B contour who would otherwise lose service as a result of its transition.¹⁴⁰

¹³⁸ All rule changes are reflected in the Appendix to this document.

¹³⁹ See OMB Control No. 3060–1115 (Form 388).

¹⁴⁰ *Digital Television Distributed Transmission System Technologies*, MB Docket No. 05–312,

¹²⁹ NAB Comments at 28, Berl Brechner Comments at 1, Mt. Mansfield Comments at 3–4, Griffin Comments at 3.

¹³⁰ United Comments at 2.

¹³¹ NAB Comments at Attachment A.

¹³² NAB Comments at 24.

¹³³ *DTV Delay Act Omnibus Order*, FCC 09–11, para 59.

¹³⁴ NAB Comments at 28, United Comments at 2, Griffin Comments at 3, Berl Brechner Comments at 1, Mt. Mansfield Comments at 3–4.

¹³⁵ Stations may explain the difference between the national and station-specific transition to viewers, even simultaneously with their countdown clock. For instance, a station could run a graphic that shows both the national countdown and the station’s countdown simultaneously, if they are different. In order to give stations more flexibility in the format of these countdown reminders, we will remove the maximum duration limits provided for in our rules.

¹³⁶ United Comments at 5.

¹³⁷ 47 CFR 73.674(d)(5).

The Commission set a deadline of August 18, 2009 for accepting such waiver requests, saying that “providing the flexibility to apply within six months after the transition date will allow stations to deal with unforeseen circumstances that come to light when they make their transition.”¹⁴¹ In comments in response to the *NPRM*, the Merrill Weiss Group LLC (“MWG”) asks that the August deadline be extended until December 14, 2009—six months after the June 12 transition date.¹⁴² We agree with MWG and extend until December 14, 2009 the deadline for accepting DTS proposals under this waiver policy. We expect that DTS can be a useful tool for stations to prevent such loss of service to existing analog viewers resulting from changes to the station’s service area in the transition to digital service and find that stations should have access to this tool for up to six months after the new June 12 deadline.

E. Phased Transition STAs Extended From August 18 to October 18

61. We reconsider *sua sponte* our decision in the *Omnibus Order* and give stations with phased transition special temporary authorizations (STAs) an additional two months—until October 18, 2009—to complete their transition and operate at their full, authorized post-transition (DTV) facilities. In addition, we will consider on a case-by-case basis extending these phased transition STAs for an additional, but limited, period of time upon an appropriate and detailed public interest justification explaining why additional time is warranted given the station’s particular circumstances. Finally, we delegate authority to the Media Bureau to consider and act on these phased transition STAs, consistent with this Order.

62. 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

Report and Order, 23 FCC Rcd 16731, para 28 (2008) (“*DTS Order*”).

¹⁴¹ *Id.* The Commission limited the use of DTS under this waiver policy to stations that apply on or before August 18, 2009 “[b]ecause the purpose of this waiver policy is to maintain service to existing viewers after the digital transition.” The Commission urged stations to determine right away “if they anticipate such a loss of service to current analog viewers and to apply as soon as possible to obtain an STA for DTS operation under the interim policy so that they can continue to provide uninterrupted service to the current analog viewers within their analog Grade B contour after they terminate their analog service.”

¹⁴² Merrill Weiss Group LLC (“MWG”) Comments.

without disappointing viewer expectations after the transition deadline.¹⁴³ 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 were required to 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 flexible options were particularly needed by stations planning to use their own or another stations analog equipment for post-transition digital operation, which made it impossible for them to finalize construction of their digital facilities before February 17th without terminating their analog service early. These stations were required to commence operations at full, authorized digital facilities no later than August 18, 2009.¹⁴⁴ To qualify for either of these phased transition 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.¹⁴⁵ We note

¹⁴³ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3041.

¹⁴⁴ *Id.*

¹⁴⁵ 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

that stations that started these viewer notifications in advance of a previously planned termination that did not occur must restart airing these notifications 30 days in advance of their phased transition.

63. 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).¹⁴⁶ In the *Omnibus Order*, however, we found it unnecessary to automatically extend the deadlines established for stations that obtained STAs through the phased transition provisions of the *Third DTV Periodic Report and Order* because, in many cases, we found these STAs were granted to address construction impediments due to weather-related concerns.¹⁴⁷ Finally, we noted in the *Omnibus Order* that, to the extent additional time is needed by phased transition stations, they must comply with Section 73.3598(b) tolling standard established in the *Third DTV Periodic Report and Order*.¹⁴⁸ We note that stations with the first type of a phased transition STA (*i.e.*, to temporarily remain on their pre-transition DTV channel) are already permitted to seek Commission approval for extensions up until February 17, 2010, provided the station continues to satisfy the conditions for this STA. We will scrutinize such requests to be sure that the circumstances justify the extension. We will grant such extensions only for as long as is absolutely necessary, based on the justifications submitted, and in no event beyond February 17, 2010.

64. Some parties object to the decision to limit the length of time stations with unique technical challenges could remain at reduced power on their post-transition facilities. They seek additional time for such stations that

viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the station’s termination of full, authorized analog service. *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3039, para 91.

¹⁴⁶ *First DTV Delay Order*, FCC 09–9 at para 3.

¹⁴⁷ See *Omnibus Order*, FCC 09–11 para 37. See also *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3036–3042, paras 88–97.

¹⁴⁸ Specifically, as noted in paragraph 36 of the *DTV Delay Act Omnibus Order*, at para 36, we 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. See 47 CFR 73.624(d)(3) (extension standard); and 47 CFR 73.3598(b) (tolling standard). We note that the Section 73.3598(b) tolling standard does not provide relief for financial hardship, except that paragraph (b)(2) would toll the construction deadline for a station that could not build because of a pending bankruptcy court action.

could demonstrate a need for more time.¹⁴⁹ For example, Tribune/Allbritton and UNC-TV explain in their *ex partes* that their particular situations require extensive tower work and coordination that can only take place after the stations terminate their analog service.¹⁵⁰ They point out that work can only commence after they terminate analog service and that they had planned on a four month process, beginning in the spring following the original February 17th transition deadline. The delay to June means that they cannot begin work on their post-transition facilities until mid-June because they will continue to use their analog transmission equipment until then.

65. We believe many other phased transition stations may be in this same situation and are, therefore, persuaded to provide two additional months to all phased transition stations, thus extending their STAs from August 18 to October 18, 2009. Given the limited amount of time afforded, and that the service requirement will minimize the loss of service after the transition date, we find it appropriate to give this two-month blanket extension to all phased transition stations. We find that providing this extra time will permit phased transition stations to continue providing analog service until the end of the transition and that the benefit of full analog service through the transition deadline weighs in favor of somewhat reduced post-transition digital service for a limited period of time.¹⁵¹

Accordingly, we extend until October 18, 2009 the construction deadline for stations with a phased transition STA deadline of August 18, 2009.

66. In addition to the blanket two-month extension granted above, we will consider on a case-by-case basis extending phased transition STAs for stations with unique technical challenges. However, absent a tolling justification, no phased transition extensions will be granted beyond February 17, 2010. To obtain an

¹⁴⁹ See, e.g., Tribune Broadcasting and Allbritton Communications ("Tribune and Allbritton") Ex Parte in MB Docket 09-17 (dated March 3, 2009); University of North Carolina ("UNC-TV") Ex Parte in MB Docket 09-17 (dated March 4, 2009); KTVU Partnership ("Cox") Comments regarding stations KTVU and KICU (each dated March 4, 2009); LeSEA Broadcasting Corporation Comments (dated March 4, 2009);

¹⁵⁰ Ex Parte Comments of Tribune Broadcasting and Allbritton Communications (dated March 3, 2009) at 1; Ex Parte Comments of the University of North Carolina (filed March 4, 2009) at 3.

¹⁵¹ We note, however, that phased transition stations must continue to comply with the Consumer Education requirements until they complete construction and commence operation of their full, authorized post-transition digital facility.

additional extension beyond October 18, the station must continue to satisfy the conditions for a phased transition STA (noted above), which, we clarify, includes a requirement that the station provide an appropriate justification explaining why additional time is warranted given the station's particular circumstances. Such a justification is always required as part of the STA approval process, but we note that we will give renewed consideration as to whether a particular length of extension is warranted in the particular circumstances at issue.

IV. Procedural Matters

A. Statutory Authority

67. As addressed in detail in the *Omnibus Order*, we have concluded that the rule changes and other actions taken in order to implement the DTV Delay Act are not subject to the rulemaking requirements of the Administrative Procedure Act,¹⁵² Congressional Review Act,¹⁵³ Regulatory Flexibility Act,¹⁵⁴ or any other provision of law that otherwise would apply and would impede implementation of the statutory directives.¹⁵⁵ No commenter disagreed with our conclusion. We find that the rule changes and other actions taken in this Order are, therefore, not subject to the above-referenced requirements and, in any event, conclude that there is good cause for departure from such requirements here for the reasons set forth in the *Omnibus Order*.

B. Additional Information

68. For more information, please contact Evan Baranoff, Evan.Baranoff@fcc.gov, at 202-418-7142 or Lyle Elder, Lyle.Elder@fcc.gov, at 202-418-2120, of the Media Bureau, Policy Division, or Eloise Gore, Eloise.Gore@fcc.gov, at 202-418-7200, of the Media Bureau.

C. Final Paperwork Reduction Act of 1995 Analysis

69. This Report and Order was analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA")¹⁵⁶ and contains modified information collection requirements. Specifically, this Report and Order modifies several existing DTV transition-related information collection requirements.¹⁵⁷

¹⁵² 5 U.S.C. 551, *et seq.* (APA).

¹⁵³ 5 U.S.C. 801, *et seq.* (CRA).

¹⁵⁴ 5 U.S.C. 601, *et seq.* (RFA).

¹⁵⁵ *DTV Delay Act Omnibus Order*, FCC 09-11 at para 70.

¹⁵⁶ The Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13, 109 Stat 163 (1995) (*codified* in Chapter 35 of Title 44 U.S.C.).

¹⁵⁷ See OMB Control Nos. 3060-0386 (CDBS Informal Filing Forms), 3060-1115 (Form 388 and

The Commission has received OMB approval under OMB's emergency processing rules for these modified information collection requirements.¹⁵⁸ For additional information concerning the information collection requirement contained in this Report and Order, contact the Office of Managing Director (OMD), Performance Evaluation & Records Management (PERM): Cathy Williams, Cathy.Williams@fcc.gov, at 202-418-2918.

V. Ordering Clauses

70. *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 Rules Appendix.

71. *It is also ordered* that, pursuant to the authority contained in Section 4(c) of the DTV Delay Act, DTV Delay Act sec 4(c), the rules, requirements, forms and procedures adopted in this Report and Order will be effective on March 13, 2009.

List of Subjects in 47 CFR Part 73

Digital television, Reporting and recordkeeping requirements, and Television.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 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. Revise § 73.674 to read as follows:

§ 73.674 Digital Television Transition Notices by Broadcasters.

(a) Each full-power commercial and noncommercial educational television broadcast station licensee or permittee must air an educational campaign about the transition from analog broadcasting

consumer education requirements), and 3060-1117 (viewer notifications for analog service termination).

¹⁵⁸ 5 CFR 1320.13.

to digital television (DTV). For each such commercial station, a licensee or permittee must elect by March 27, 2008, to comply with either paragraph (c) or (d) of this section. For each such noncommercial station, a licensee or permittee must elect, by March 27, 2008, to comply with paragraph (c), (d), or (e) of this section. A licensee or permittee must note their election via the filing of Form 388 as required by §§ 73.3526 and 73.3527.

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

(1) The station must comply with the requirements of the paragraph it elects with respect to its analog channel and its primary digital stream.

(2) Any Public Service Announcement aired to comply with these requirements must be closed-captioned, notwithstanding § 79.1(d)(6) of this chapter.

(3) The campaign must begin no later than March 27, 2008, and continue at least through the station's termination of analog service, not later than June 12, 2009, except for stations subject to the provisions of paragraph (b)(4) of this section.

(4) Any station that has filed a request for an extension of the deadline for construction of its full, authorized post-transition digital facility, including a request for phased transition pursuant to the Third DTV Periodic Report and Order in MB Docket 07–91, or is operating under such an extension, must continue its DTV consumer education campaign until the station completes construction of its full, authorized post-transition digital facility. After the station terminates analog service, it must continue to comply with the requirements of the Consumer Education Campaign Option that it has elected, except that the content of all on-air education must be revised to provide information about the station's limited digital service area and the anticipated date for it to complete construction and commence operation of its full, authorized post-transition digital facility.

(5) *Service Loss Notices*—Beginning April 1, 2009, if the FCC's Signal Loss Report, available on <http://www.dtv.gov>, predicts that 2 percent or more of the population in a station's Grade B analog service contour will not receive the station's digital signal, the station must air service loss notices, as provided in this paragraph.

(i) Service loss notices may be no fewer than 30 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m. At least three service loss notices per week must air

between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(ii) Service loss notices are in addition to the other obligations imposed by this section.

(iii) The service loss notices must include the FCC's Call Center number, 1–888–CALL–FCC, the FCC's TTY number, 1–888–TELL–FCC, and the Web site address for the FCC's online digital reception mapping tool, <http://www.DTV.gov/maps>.

(iv) The station must post service loss information on its Web site home page, including a link to the relevant coverage change maps on <http://www.DTV.gov> and the FCC's online digital reception mapping tool, <http://www.DTV.gov/maps>. This information must remain available on the station's Web site home page for at least 30 days after the station terminates its analog service, notwithstanding the termination of other consumer education requirements.

(v) The loss areas disclosed in the service loss notices must be based on the FCC's Signal Loss Report.

(vi) Service loss notices must disclose that some current viewers of the station's analog signal are predicted to experience a loss of service and describe the discrete geographic areas where there is likely to be a service loss.

(vii) If any predicted service loss is attributable to a change in the station's frequency from VHF to UHF, and the predicted losses cannot entirely be described with respect to discrete geographic areas, the station must, at a minimum, disclose that some analog viewers located in areas obstructed by hills or buildings are predicted to be unable to receive the station's digital signal. This is in addition to, and not in lieu of, descriptions of any discrete geographic areas where there is likely to be a service loss.

(6) *Antenna Information Notices*—Beginning April 1, 2009, all stations must include information about the use of antennas as part of their consumer education campaign, as provided in this paragraph.

(i) The antenna information notices should provide information about the types of antennas that their viewers may need, and how to install them.

(ii) Stations that have changed or are changing the frequency band in which they broadcast must inform their viewers of the change in frequencies and explain how the change affects the antenna they need to receive their signal.

(iii) Stations that are predicted by the FCC's Signal Loss Report to have any

loss of viewers should consider whether their viewers can improve their ability to receive their signal by obtaining a different or better antenna, and if so, provide information concerning such antennas.

(iv) Antenna information notices must be no fewer than 15 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m. At least three antenna information notices per week must air between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(v) Antenna information notices may be included as part of a station's DTV Consumer Education Initiative efforts, or may be discussed for at least 15 seconds during news programs, or broadcast in other ways that the station determines will be most helpful to consumers.

(vi) Notwithstanding the content requirements of paragraph (c) of this section, a licensee or permittee electing compliance with paragraph (c) of this section may replace up to 25 percent of their daily PSAs and crawls with antenna notices.

(7) *Rescanning Notices*—Beginning April 1, 2009, all stations must include information in their consumer education campaigns to inform and remind viewers about the importance of periodically using the rescanning function of their digital televisions and digital converter boxes, as provided in this paragraph.

(i) Rescanning notices should explain why rescanning is important in general and, in particular, if the station is changing channels or signal direction.

(ii) Rescanning notices must be no fewer than 15 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m. At least three rescanning notices per week must air between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(iii) Rescanning notices may be included as part of a station's DTV Consumer Education Initiative efforts, or may be discussed for at least 15 seconds during news programs, or broadcast in other ways that the station determines will be most helpful to consumers.

(iv) Notwithstanding the content requirements of paragraph (c) of this section, a licensee or permittee electing compliance with paragraph (c) of this section may replace up to 25 percent of their daily PSAs and crawls with rescanning notices.

(8) *Help Center Notices*—Beginning April 1, 2009, as part of its DTV consumer education campaign, every station must air notices providing the location and operating hours of walk-in DTV help centers in the station's market area; the FCC Call Center telephone number and TTY number; and the station's telephone number for receiving consumer referrals and calls from local viewers, as provided in this paragraph.

(i) Help center notices must be no fewer than 15 seconds long, and must be aired at least once per day, between 8 a.m. and 11:35 p.m. At least three help center notices per week must air between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(ii) Help center notices may be included as part of a station's DTV Consumer Education Initiative efforts, or may be discussed for at least 15 seconds during news programs, or broadcast in other ways that the station determines will be most helpful to consumers.

(iii) Notwithstanding the content requirements of paragraph (c) of this section, a licensee or permittee electing compliance with paragraph (c) of this section may replace up to 25 percent of its daily PSAs and crawls with help center notices.

(c) *Consumer Education Campaign Option One:*

(1) From March 27, 2008 through the station's termination of analog service or, for stations subject to the provisions of paragraph (b)(4) of this section, until the station completes construction of its full, authorized post-transition digital facility, a licensee or permittee must, at a minimum, air one transition-related public service announcement (PSA), and one transition-related informative text crawl, in every quarter of every broadcast day. This minimum will increase to two of each, per quarter, from April 1, 2008 through September 30, 2008, and to three of each, per quarter, from October 1, 2008 through the conclusion of the campaign. At least one PSA and one informative text crawl per day must be aired between 8 p.m. and 11 p.m. in the Atlantic, Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain, Central, and Alaskan time zones.

(2) For the purposes of this section, each broadcast day consists of four quarters; 6:01 a.m. to 12 p.m., 12:01 p.m. to 6 p.m., 6:01 p.m. to 12 a.m., and 12:01 a.m. to 6 a.m.

(3) Informative text crawls must:

(i) Air during programming;

(ii) Air for no fewer than 60 consecutive seconds;

(iii) Be displayed so that the text travels across the bottom or top of the viewing area at the same speed used for other informative text crawls concerning news, sports, and entertainment information;

(iv) Be presented in the same language as a majority of the programming carried by the station;

(v) Be displayed so that they do not block and are not blocked by closed-captioning or emergency information; and

(vi) Contain at least the following information, but may contain more, provided they contain no misleading or inaccurate statements:

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

(B) More information is available by phone and online, and provide appropriate contact information, including means of contacting the station or the network.

(4) Public service announcements must have a duration of no fewer than 15 consecutive seconds, and contain, at a minimum, the information described in paragraph (c)(3)(vi) of this section. They must also address the following topics at least once each during every calendar week:

(i) The steps necessary for an over-the-air viewer or a subscriber to a multichannel video programming distributor to continue viewing the station after the transition;

(ii) The channel on which the station can be viewed after the transition;

(iii) Whether the station will be providing multiple streams of free video programming during or after the transition;

(iv) Whether the station will be providing a High Definition signal during or after the transition;

(v) The exact date and time that the station will cease analog broadcasting; and

(vi) The exact date and time that the station will begin digital broadcasting

on its post-transition channel, if it has not already done so.

(d) *Consumer Education Campaign Option Two:*

(1) A licensee or permittee must, at a minimum, air an average of sixteen (16) transition-related PSAs per week, and an average of sixteen (16) transition-related crawls, snipes, and/or tickers per week, over a calendar quarter.

(2) For the purposes of calculating the average number of PSAs aired, a 30-second PSA qualifies as a single PSA, and two 15-second PSAs count as a single PSA.

(3) PSAs, crawls, snipes, and/or tickers aired between the hours of 1 a.m. and 5 a.m. do not conform to the requirements of this section and will not count toward calculating the average number of transition-related education pieces aired.

(4) Over the course of each calendar quarter, 25 percent of all PSAs, and 25 percent of all crawls, snipes, and/or tickers, must air between 6 p.m. and 11:35 p.m. (Atlantic, Eastern and Pacific time zones) or between 5 p.m. and 10:35 p.m. (Mountain, Central, and Alaskan time zones).

(5) Stations must air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day after April 1, 2009, and prior to the station's termination of analog service. The program must contain at least the following information:

(i) The fact that Congress has changed the deadline for the national DTV transition to June 12, 2009;

(ii) The date and approximate time of day when the station airing the informational video is terminating analog service;

(iii) The date and approximate time of day when all other full-power stations in the same market are terminating analog service;

(iv) For stations covered by paragraph (b)(5) of this section, the same service loss information required by paragraph (b)(5) of this section.

(6) Beginning on April 1, 2009, or sixty (60) days prior to the station's termination of analog service, whichever is later, the station must begin a 60-Day Countdown to its transition to digital-only service. During this period, the station must air at least one of the following per day:

(i) *Graphic Display.* A graphic superimposed during programming content that reminds viewers graphically there are "x number of days" until the transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The

duration must be at least five (5) seconds.

(ii) *Animated Graphic*. A moving or animated graphic that ends up as a countdown reminder. It would remind viewers that there are “x number of days” until the transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The duration must be at least five (5) seconds.

(iii) *Graphic and Audio Display*. Option #1 or option #2 with an added audio component. The duration must be at least five (5) seconds.

(iv) *Longer Form Reminders*. Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an “Ask the Expert” segment where viewers can call in to a phone bank and ask knowledgeable people their questions about the transition. The duration must be at least two (2) minutes. (Some stations may also choose to include during newscasts DTV “experts” who may be asked questions by the anchor or reporter about the impending transition deadline.)

(e) *Consumer Education Campaign Option Three*:

(1) Only a licensee or permittee of a noncommercial television station may elect this option. Under this option, from March 27, 2008, through April 30, 2008, a noncommercial broadcaster must, at a minimum, air 60 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 7.5 minutes per month between 6 p.m. and 12 a.m. From May 1, 2008, through October 31, 2008, a broadcaster must, at a minimum, air 120 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 15 minutes per month between 6 p.m. and 12 a.m. From November 1, 2008, through the station’s termination of analog service, or, for stations subject to the provisions of paragraph (b)(4) of this section, until the station completes construction of its full, authorized post-transition digital facility, a broadcaster must, at a minimum, air 180 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 22.5 minutes per month between 6 p.m. and 12 a.m.

(2) Noncommercial stations must air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day after April 1, 2009, and prior to the station’s termination of analog service. The program must contain at least the following information:

(i) The fact that Congress has changed the deadline for the national DTV transition to June 12, 2009;

(ii) The date and approximate time of day when the station airing the informational video is terminating analog service;

(iii) The date and approximate time of day when all other full-power stations in the same market are terminating analog service;

(iv) For stations covered by paragraph (b)(5) of this section, the same service loss information required by paragraph (b)(5) of this section.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 356, 365, and 374

[Docket No. FMCSA–2008–0235]

RIN 2126–AB16

Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers Over Regular Routes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; delay of effective date and request for comments.

SUMMARY: On March 3, 2009, FMCSA published a document in the **Federal Register** (74 FR 9172) requesting comments on its proposal to delay the effective date of its January 16, 2009, final rule entitled “Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers over Regular Routes.” Based on the five comments received, all supporting the proposal to delay the effective date of the final rule, FMCSA is extending the effective date by 90 days, and seeks additional public comment on the rulemaking. The final rule announced the discontinuation of the administrative requirement that applicants seeking for-hire authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate. In response to the Assistant to the President and Chief of Staff’s memorandum of January 20, 2009, FMCSA extends the effective date to allow the Agency the opportunity for further review and consideration of the January 16, 2009, final rule and solicits public comments on the final rule. In order to afford sufficient time to

consider and respond to comments, the effective date is extended for 90 days.

DATES: Comments must be received on or before April 16, 2009. The effective date of the rule amending 49 CFR Parts 356, 365, and 374, published at 74 FR 2895, January 16, 2009, is delayed until June 15, 2009. The compliance date for this rule continues to be July 15, 2009.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. The Federal eRulemaking portal is the preferred method for submitting comments, and we urge you to use it.

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments. In the *Comment or Submission* section, type Docket ID Number “FMCSA–2008–0235”, select “Go”, and then click on “Send a Comment or Submission.” You will receive a tracking number when you submit a comment.

Telefax: 1–202–493–2251.

Mail, Courier, or Hand-Deliver: Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Regardless of the method used for submitting comments, all comments will be posted without change to the Federal Docket Management System (FDMS) at <http://www.regulations.gov>. Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT’s complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476) or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Regulatory Development Division, (202) 366–5370 or by e-mail at: FMCSAregs@dot.gov.

SUPPLEMENTARY INFORMATION: On January 16, 2009, FMCSA published a final rule announcing the discontinuation of the administrative requirement that applicants seeking for-hire authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate (74