| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD). | Communities affected |
|---|---|---|
| *McCandless Cleghorn Drainage Ditch:* | | |
| At its confluence with the Missouri River | *1,039 | Monona County (Uninc. Areas). |
| At 235th Street | *1,044 | Monona County (Uninc. Areas), City of Onawa. |
| Approximately 1,000 feet downstream of 220th Street | *1,051 | Monona County (Uninc. Areas), City of Onawa. |
| At intersection of West Street and Walnut Street | *1,058 | Monona County (Uninc. Areas), City of Whiting. |
| Approximately 1,400 feet upstream of County Highway 45 | *1,061 | Monona County (Uninc. Areas), City of Whiting. |
| Just downstream of County Highway 45 | *1,063 | Monona County (Uninc. Areas). |

**ADDRESSES**

**Monona County (Unincorporated Areas)**

Maps are available for inspection at the Monona County Zoning Office, Chairman, Monona County Board of Supervisors, 610 Iowa Avenue, Onawa, Iowa.

**City of Onawa**

Maps are available for inspection at the Leon Valley City Hall, 914 Diamond Street, Onawa, Iowa.

**City of Whiting**

Maps are available for inspection at City Hall, 605 Whittier Street, Whiting, Iowa.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 11, 2001.

**Robert F. Shea,**

*Acting Administrator, Federal Insurance and Mitigation Administration.*

[FR Doc. 01–31033 Filed 12–17–01; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 00–39; FCC 01–330]**

### Broadcast Services; Digital Television

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document resolves a number of petitions for reconsideration of the Federal Communications Commissions' Report and Order and Further Notice of Proposed Rule Making (R&O). This document addresses a number of issues related to the conversion of the nation's broadcast television system from analog to digital television (DTV), including when to require election by licensees of their post-transition DTV channel, whether to require replication by DTV licensees of their NTSC Grade B service contours, whether to require DTV licensees to place enhanced service contours over their principal communities, and how to process mutually exclusive applications. The document also modifies the minimum hours of operation of certain DTV stations and establishes guidelines for television stations that may seek an extension of the deadlines for construction of DTV facilities. Our intention in revising some of the decisions reached in the Report and Order is to revise certain requirements that may be having the unintended consequence of hindering, rather than furthering, the DTV transition, and to prioritize those elements most important to the transition. The decisions reached in this document should maximize the number of DTV stations providing service to at least all consumers in their community of license by allowing DTV stations to go on the air initially with lower-powered, and therefore less expensive, facilities.

**DATES:** The decisions and rules adopted herein shall be effective February 19, 2002, except for FCC Form 337 which contains information collection requirements that have not been approved by OMB. Written comments on this new information collection are due February 19, 2002. The FCC will publish a document announcing the effective date of FCC Form 337 once OMB approval is received. This form appears as an appendix to this document.

**ADDRESSES:** Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418–2130. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (MO&O), FCC 01–330, adopted November 8, 2001, released November 15, 2001. The full text of the Commission's MO&O is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th Street, SW., Washington, DC 20554. The complete text of this MO&O may also be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The text of the MO&O is also available from the FCC's Internet website: *www.fcc.gov.*

### Paperwork Reduction Act

This MO&O contains either a new or modified information collection. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other government agencies to comment on the information collection contained

in this MO&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 19, 2002. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Control Number:* 3060–XXXX.

*Title:* Application for Extension of Time to Construct a Digital Television Broadcast Station.

*Form No.:* FCC 337.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit; not-for-profit institutions.

*Number of Respondents:* 600 (400 extensions; 200 requests for special temporary authority).

*Estimated Time per Response:* 1.5 hours extensions (0.5 hours respondent; 1 hour attorney); 4.0 hours. STA (1 hour respondent; 1 hour attorney; 2 hours consulting engineer).

*Total Annual Burden:* 400 hours.

*Total Annual Costs:* $207,000.

*Needs and Uses:* The MO&O revises the circumstances under which an extension of time to construct a digital television broadcast station can be requested. The Commission has developed the FCC 337 to be used by DTV permittees to apply for an extension of time. Applicants must retain documentation fully detailing and supporting their representations made on this form. In addition, the MO&O adopted a provision for special temporary authority for licensees that have not been granted a construction permit for allotted or maximized DTV facilities to commence digital operations. The request for special temporary authority must specify the technical facilities requested. The data is used by FCC staff to determine, on a case-by-case basis, whether a broadcaster should be afforded additional time to construct its facilities and to ensure that operation will not exceed allotted parameters.

**Synopsis of Memorandum Opinion and Order on Reconsideration**

*I. Introduction*

1. In this MO&O, we revise a number of the determinations we made in the R&O, affirm other decisions, and provide clarification of certain rules and policies. We also modify, on our own motion, the minimum hours of operation of certain DTV stations and establish guidelines for television stations that may seek an extension of our deadlines for construction of DTV facilities. We will resolve several major technical issues raised in the R&O, including the issues of receiver performance standards, DTV tuners, revisions to the ATSC transmission standard (including the PSIP standard), and labeling requirements for television receivers, in a separate R&O.

*II. Background*

2. In the Commission's digital television proceeding (MM Docket No. 87–268), we indicated our intention to hold periodic reviews of the progress of the conversion to digital television and to make any mid-course corrections necessary to ensure the success of that conversion. In the Fifth Report and Order in MM Docket 87–268 (63 FR 135461, May 20, 1998) (Fifth R&O), we stated that we would conduct such a review every two years in order to ''ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest.'' We commenced this first periodic review with a Notice of Proposed Rule Making in MM Docket 00–39 (65 FR 15600, March 23, 2000) (NPRM), adopted March 6, 2000. In the NPRM, we invited comment on a number of issues that we considered essential to resolve in order to ensure continued progress on the conversion. We also sought comment generally on various aspects of the transition, such as the pace of DTV receiver sales and the availability of financing for digital facilities.

3. Based on the comments we received in response to the NPRM, we made a number of determinations in the R&O that we believed would further progress on the transition. Among other things, we established a December 31, 2003 deadline by which commercial television stations that have both their NTSC and DTV operations on in-core channels must elect which of their two core channels to use for DTV operations after the transition. We gave non-commercial stations that have both their NTSC and DTV operations on in-core channels until the end of 2004 to elect their post-transition DTV channel. We determined that this early channel election would allow us to identify more quickly channels that will be available to accommodate DTV licensees with out-of-core transition channels as well as new entrants. In addition, to provide broadcasters with an incentive to provide full replication of NTSC coverage with DTV service, we determined that, after December 31, 2004, whatever portion of a commercial broadcaster's NTSC Grade B contour is not replicated with its digital television signal will cease to be protected in the DTV Table of Allotments. Noncommercial DTV licensees were given until December 31, 2005 in which to replicate or lose such DTV interference protection. We also imposed a principal community coverage requirement that is stronger than the DTV service contour requirement that we adopted as an initial obligation in the Fifth R&O. This new city-grade service requirement, which becomes effective December 31, 2004 for commercial stations and December 31, 2005 for noncommercial stations, was intended to improve the availability of service in the community of license and to prevent undue migration of stations from their communities of license.

4. In addition, in our R&O we adopted DTV application cut-off procedures and determined how we would resolve any mutually exclusive applications. We also made a number of technical decisions, including our determination that there is no persuasive information to indicate that there is any deficiency in the 8-VSB modulation system of the DTV transmission standard that would warrant adding COFDM to the current standard. Finally, we declined to adopt technical performance standards for DTV receivers, although we indicated we would continue to monitor receiver issues throughout the transition and would take appropriate action on receiver standards if necessary.

5. Upon further consideration, and after careful review of the petitions for reconsideration, we believe that some of the requirements that we adopted in the R&O may be having the unintended consequence of hindering, rather than furthering, the DTV transition. In particular, we believe that the Commission's current channel election and replication requirements and deadlines may be imposing substantial burdens on broadcasters without sufficient countervailing public benefits, and may in fact be contributing to difficulties faced by a substantial number of stations in meeting their DTV construction deadlines.

6. The DTV build-out dates have passed for the top-30-market major network affiliate stations. As of September 2001, thirty-seven of the 40 major network affiliate stations in the top 10 television markets are on the air with DTV service, 36 with licensed

facilities and one with special temporary authority (''STA''). In addition, 71 of the 79 major network affiliate stations in markets 11–30 are providing digital service, 61 with licensed facilities and 10 with STAs. By May 1, 2002, all remaining commercial television stations are required to complete construction and commence DTV operations. Noncommercial stations have until May 1, 2003 to complete construction.

7. The National Association of Broadcasters (NAB) recently conducted a survey of all full-power commercial TV stations to determine how many anticipate they will have a digital signal on the air by May 2002. The results of the survey show that more than two thirds (68.2%) of responding stations reported that they either are operating now in digital format or expect to have a digital signal on the air by May 2002. Stations that anticipate meeting the deadline would provide at least one digital signal by next May in 164 television markets. According to the NAB, these markets include 95.8 % of all television households.

8. While these survey results are encouraging, it nonetheless appears that slightly less than one-third (31.8%) of all stations responding to the NAB survey anticipate that they will not be able to provide a digital signal by the May 2002 deadline. A larger percentage (81.9%) of responding stations in the top 50 markets anticipate that they will meet the deadline, while a smaller percentage (49.1%) of stations in markets 100 and above indicated they will complete construction on time. Three-quarters of those stations that do not anticipate meeting the May 2002 deadline indicated they plan to seek an extension of this deadline from the FCC. Generally, smaller market broadcasters that filed petitions in this proceeding assert that they are unable to obtain financing to construct DTV facilities sufficient to replicate their analog service area. These broadcasters also claim that they will not have sufficient operational experience by December 2004 to determine which core channel is superior for DTV transmission. Broadcasters that are not capable of constructing full replication facilities by the deadline established in the R&O may be postponing construction altogether. Thus, while the Commission's current replication deadline was intended to provide an incentive to stations to construct DTV facilities capable of reaching their entire service area, this deadline may in fact be causing stations to delay construction, thus slowing transition progress.

9. As discussed more fully below, upon reconsideration we have decided to allow stations to construct initial DTV facilities designed to serve at least their communities of license, while still retaining DTV interference protection to provide full replication at a later date. Thus, we will temporarily defer the replication protection and channel election deadlines we established in the R&O. In our next periodic review of the progress of the DTV transition, we intend to establish a firm date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection of the unreplicated areas, and by which broadcasters with two in-core allotments must elect which channel they will eventually use at the end of the transition. These replication protection and channel election deadlines may be earlier than but will in no event be later than the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. During the next periodic review, we intend to develop a record on the progress of the transition and how such progress relates to such issues as band clearing and the goal of the rapid recovery of spectrum for public safety and other wireless services, as well as other issues related to the successful conclusion of the DTV transition. In order to provide parity to analog UHF stations, we will also allow these stations to construct initial facilities that serve their principal communities while retaining for the time being DTV interference protection to their maximized service areas, subject to the interference protection deadline we intend to establish in the next periodic review. We will not alter, however, our decision to require stations to provide a stronger signal to their communities of license than that adopted as an initial requirement in the Fifth R&O. As established in the R&O, this new city-grade service requirement will become effective December 31, 2004 for commercial stations and December 31, 2005 for noncommercial stations.

10. Our intention in making these revisions to the decisions reached in the R&O is to prioritize those elements that are most important to the DTV transition. At this point, we believe our primary goal should be to maximize the number of DTV stations providing service to at least all consumers in their community of license. Relaxing our channel election and replication requirements will allow stations to go on the air with lower-powered, and therefore less expensive, facilities, while also providing broadcasters additional time to consider their post-transition facilities. The reduced build-out requirements we adopt today will allow broadcasters to save both on construction and operating costs, including lower power expenses. Indeed, the ability to transmit at lower power may permit many of these stations to transmit from existing towers, rather than being forced to build new facilities immediately. In addition, we will allow DTV stations that are not yet required to be on the air with a digital signal—*i.e.,* those that are subject to the May 1, 2002 or May 1, 2003 deadlines, including stations subject to those deadlines that are currently on the air early—to operate initially at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. This is consistent with our recognition that such stations, as an initial matter, may need the flexibility to adopt a more graduated approach to the transition. We believe that this approach may permit more stations to meet the build-out deadlines and help advance the digital transition. This minimum will effectively be increased under the Commission's existing simulcast obligations, which require DTV licensees to simulcast 50% of their analog schedule by April 1, 2003, 75% of their analog schedule by April 2004, and 100% of their analog schedule by April 2005. Stations that were subject to the earlier construction deadlines (top four network affiliates in the top thirty markets) will remain subject to the previous rule—*i.e.,* they must operate their DTV station at any time that the analog station is operating. This distinction is consistent with our prior treatment of these stations. In establishing earlier build-out deadlines for these stations in the Fifth R&O, we noted that ''the most viewed stations in the largest television markets can be expected to lead the transition to DTV'' and that these stations are ''likely to have substantial revenues that may be used to fund the conversion.''

11. In the end, we believe that reconsidering these rules will help further the DTV transition while actually promoting the goals of replication and of maximizing the digital service provided to the public. Getting more stations on the air will help drive DTV set penetration. Increasing the number of DTV sets in production and in the hands of consumers will bring prices down and provide an incentive for content producers and advertisers to invest in

DTV. Ultimately, an expanding DTV marketplace will help further the expansion of DTV into unserved areas in the future.

*III. Issue Analysis*

A. Channel Election

12. After the transition, DTV service will be limited to a ''core spectrum'' consisting of current television channels 2 through 51. Although some stations received transition channels out of the core, and a few have both their NTSC and DTV channels outside the core, we believe that there will be sufficient spectrum so that at the end of the transition all DTV stations will be operating on core channels. However, as we indicated in the R&O, it now appears that there will be more out of core stations that must be accommodated with a core channel than we initially anticipated because new applicants will be allowed to convert their single NTSC channels to DTV operation and those on NTSC and DTV channels outside the core will be provided a post-transition channel inside the core. Also, the recent establishment of primary Class A television stations may limit availability of core channels in some areas.

13. These factors influenced our decision in the R&O to mandate early election of DTV channels for that category of licensees with both their NTSC and DTV channels within the core. Specifically, we gave commercial television licensees with both their NTSC and DTV operations on in-core channels until December 31, 2003 to decide which of their two in-core channels to use for DTV operations after the transition. We noted that this is more than one and a half years after the last commercial station construction deadline (*i.e.,* May 1, 2002), and stated our belief that this gave stations time in which to decide which of their two in-core channels would be most suitable for use in digital broadcasting. We stated that setting this channel election deadline would enable us to determine at an early date, on a market-by-market basis, what in-core channels would be available for use by stations having two out-of-core channels. We also stated our belief that an early final channel election would help speed the transition by making the final local channel alignments clear. We gave non-commercial stations that have both their NTSC and DTV operations on in-core channels until the end of 2004 to elect their channels, or more than one and a half years after their construction deadline (*i.e.,* May 1, 2003).

14. As we indicated above, upon reconsideration we have determined to temporarily defer the imposition of a channel election deadline until the next periodic review. We intend to monitor closely the progress of the transition and, based on developments between now and the conclusion of the next review, we will establish a channel election deadline that may be earlier than but in no event will be later than the latest of either the end of 2006 or the date by which a market meets the 85% digital penetration target. We believe that this action is consistent with, and necessitated by, our decision today to allow stations to construct initial DTV facilities designed to serve their communities of license, while still preserving DTV interference protection to provide full replication or maximization service at a later date.

15. We expect that a number of stations will choose to meet our May 2002 construction deadline by building less than full facilities initially, or by operating at lower power, and increasing power over time in relation to the demand for digital programming. We are today permitting stations to commence service with facilities that meet the minimum requirements set forth in § 73.625(a)(1) of our rules. By December 31, 2004, commercial stations must meet the increased city-grade signal strength requirements we imposed in the R&O. Noncommercial stations have until December 31, 2005 to meet this city-grade service obligation. At the same time, on our own motion, we will allow television stations subject to the May 1, 2002 and May 1, 2003 DTV construction deadlines to operate digitally at a reduced schedule by providing, at a minimum, a digital signal during prime time as specified in § 79.3(a)(6) of our rules. With respect to these stations, this replaces our current rule that requires that DTV licensees and permittees transmit at least one DTV signal at any time the licensee or permittee transmits an analog signal. This modified rule does not reduce the simulcast obligations of these licensees, described in § 73.624(f) of our rules. Thus, for example, by April 1, 2003, a DTV station that was required to be on the air by May 1, 2002 must provide a digital signal at least 50 percent of the time it transmits an analog signal, and under the requirements of § 73.624(b)(i), a portion of the simulcasting must occur during prime time.

16. We believe that permitting stations to elect a more graduated approach to providing DTV service will foster the early introduction of DTV service to core service areas, and allow stations to grow into their full DTV facilities as the transition progresses. Because we are permitting stations greater flexibility to increase digital power and hours of service over time, we believe stations must be given an opportunity to increase power and gain experience at those higher power levels before they can make an educated choice about which of their two channels will provide optimal DTV service. We believe that this concern outweighs the benefits we discussed in the R&O that would result from an early election date. Accordingly, we will temporarily defer the imposition of an election deadline until the next periodic review.

B. Replication and Maximization

1. Replication

17. We established NTSC service replication as a goal in the creation of the initial DTV Table of Allotments. Each DTV channel allotment was chosen to best allow its DTV service to match the Grade B service contour of the NTSC station with which it was paired. As we stated in the R&O, we continue to believe that this approach provides important benefits to both viewers and broadcasters and ''will ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air.''

18. In the R&O, we stated our expectation that DTV broadcasters would eventually choose to replicate their NTSC service areas to serve their viewers. However, we concluded we would not require replication because we wanted to give broadcasters a measure of flexibility as they build their DTV facilities to collocate their antennas at common sites, thus minimizing potential local difficulties locating towers and eliminating the cost of building new towers. We also recognized, among other things, that, in the absence of a Commission-mandated replication requirement and because we provided licensees a certain amount of transmitter location flexibility, some licensees may have already built their initial DTV facilities in locations that are unsuitable for full replication.

19. While we concluded we would not expressly require full replication of NTSC coverage with DTV service, we determined we would provide an incentive to broadcasters to provide such replication in order to assure that viewers do not lose service and to speed the transition. Specifically, we decided to cease to give DTV interference protection to commercial broadcasters' unreplicated service areas as of December 31, 2004. Thus, under the decision we reached in the R&O,

commercial broadcasters that did not replicate their NTSC Grade B service area as of that date left the unreplicated portions of their DTV service area unprotected in the DTV Table of Allotments against other DTV broadcasters seeking to maximize their own service areas or analog full or low-power broadcasters, including Class A licensees, seeking to expand the service area of their existing stations. We gave noncommercial DTV licensees until December 31, 2005 to replicate or lose interference protection.

20. As we indicated above, upon reconsideration we have decided to temporarily defer until the next periodic review the replication deadlines established in the R&O. We agree with those petitioners who believe that, even as an incentive, a fixed date of 2004 (or 2005 for noncommercial stations) may be too soon to reasonably expect all stations to have constructed full replication facilities. However, during the next periodic review of the progress of the DTV transition, we will establish a new interference protection deadline that, as with the channel election deadline discussed above, may be earlier than but will not be later than the end of 2006 or the date by which a market meets the 85% digital penetration target, whichever is later. Our consideration of the issue of the appropriate interference protection deadline during the next periodic review will be informed by the progress that has occurred on issues such as band-clearing and recovering the spectrum for public safety use and other services.

21. Under the approach we are adopting today, stations will be allowed, without loss of full service area protection, to commence digital operations by constructing and operating facilities that at least provide the required level of digital signal strength to their communities of license. This will allow stations to focus their energies initially on providing digital service to their core communities, while permitting them later to expand their coverage area as the DTV transition progresses. We believe that this approach more closely reflects the marketplace realities, such as DTV receiver penetration, upon which the financial decisions of broadcasters and those who offer them financing are based. Because of the large costs of building and operating digital facilities, we recognize that some broadcasters, and particularly those in smaller markets, may need to take a more graduated approach to implementing digital service. The requirement that broadcasters serve their communities of license will ensure that, for most stations, the majority of their analog service populations will receive initial digital service. Once all broadcast stations have commenced at least the minimal level of service to their communities, we believe that DTV set penetration levels will increase and marketplace forces will work to further speed the transition and provide an incentive to broadcasters to expand to provide service to outlying areas. We are hopeful that this approach will prompt broadcasters to build out to their allotted power in response to consumer demand and competition from other stations. Thus, we will continue to protect the replication service areas in the DTV Table of Allotments until the replication protection deadline we establish in our subsequent periodic review.

2. Maximization

22. We agree with those petitioners that argue that licensees seeking to construct maximized DTV facilities should be treated the same for purposes of interference protection as licensees seeking to construct allotted DTV facilities. Our goal in permitting DTV stations to apply to maximize was to ensure that they could increase their DTV signal coverage and provide DTV service competitively within their respective markets. The Commission was particularly concerned that it not artificially limit the size of DTV service areas for UHF analog licensees as an artifact of UHF analog service constraints. In enacting the Community Broadcasters Protection Act of 1999, Congress recognized the importance of preserving the right of DTV stations to maximize and established specific measures to ensure the protection of maximized service areas against new Class A stations.

23. The construction deadlines for remaining television licensees are May 1, 2002 (commercial) and May 1, 2003 (noncommercial), which are also the respective construction deadlines for outstanding construction permits for maximized facilities granted by the Commission. For the same reasons we temporarily deferred our regulatory replication incentive, we will continue to provide DTV interference protection for the time being to the maximized service area specified in outstanding DTV construction permits for facilities in excess of those specified in the DTV Table of Allotments. We intend in our next periodic review to establish a date by which broadcasters with authorizations for maximized digital facilities must either provide service to the coverage area specified in their maximization authorizations or lose DTV service protection to the uncovered portions of those areas. As with the channel election and replication deadlines for allotted DTV facilities discussed above, this deadline for completion of maximization facilities may be earlier than but will not be later than the latest of either the end of 2006 or the date by which 85% digital penetration is achieved.

24. By the action we take today, we give DTV licensees seeking to maximize facilities the same flexibility to implement graduated construction plans as licensees of facilities specified in the DTV Table of Allotments. Thus, licensees seeking to maximize may choose initially to construct and operate digital facilities that provide service only to their communities of license while retaining assurance that the maximized coverage area will be available in the future, until the deadline established in the next periodic review. We agree that this flexibility is especially important for UHF analog licensees that may face greater financial difficulty in constructing digital facilities than their analog VHF counterparts. We believe that providing flexibility to stations seeking to maximize will help speed the transition by allowing them to implement digital service with less costly facilities initially while still providing service to their core communities. Once these digital stations are on air, we expect that consumer demand for digital sets and signals will increase and that marketplace forces will act to encourage these stations to expand service to their maximized coverage area.

3. DTV STAs

25. Licensees must construct at least the minimum initial facilities required to serve their community of license by May 1, 2002 (commercial) or May 1, 2003 (noncommercial). Licensees with an existing construction permit for a larger facility may elect to commence digital operation with a DTV facility that complies only with these minimum initial build-out requirements and is fully subsumed by the permitted facilities. We will also permit licensees that have not yet been granted a construction permit for allotted or maximized DTV facilities to request an STA to commence digital operation. Licensees choosing to request an STA should file their request with the Commission as early as possible and, in any event, at least 10 days before they plan to commence operation. The STA request must specify the technical facilities requested, including the

station's ERP, HAAT, antenna pattern, if any, geographic coordinates, and tower registration number, if any. The STA request must also include a certification that the facilities are in compliance with the FCC's rules and that the coverage in any direction does not exceed that resulting from the allotted parameters in Appendix B or in an outstanding construction permit. In this regard, we urge licensees to pay special attention to compliance with FAA and FCC tower requirements, the community of license coverage requirement, and the FCC's environmental rules governing radio frequency (''RF'') radiation.

26. Once the Commission has granted a DTV STA request, the licensee or permittee will be authorized to commence digital service as specified in the STA. The Commission will make every effort to act on DTV STA requests within 10 days, absent oppositions or unusual circumstances. STAs will be granted for a period up to six months. The Commission delegates authority to the Mass Media Bureau to continue to extend STAs for additional periods not to exceed six months each until such time as the Commission determines otherwise (for example, by requiring that licensees either construct full replication or maximization facilities or relinquish interference protection). Under our rules, STAs are revocable at will.

27. Commercial and noncommercial stations that are operating pursuant to a DTV STA by their respective construction deadlines (May 1, 2002 or May 1, 2003) will be considered to have met this construction deadline, and their outstanding construction permits will be extended automatically until such time as the Commission determines otherwise (for example, by requiring that licensees either construct full replication or maximization facilities or relinquish interference protection). A copy of the STA issued by the FCC must be maintained in the station's local public inspection file. Periodically, the staff will issue public notices identifying the stations authorized to operate on DTV STAs and the parameters under which they are or will be operating. Stations operating pursuant to a DTV STA must comply with the enhanced community coverage requirement by December 2004 (December 2005 for noncommercial stations). Until the Commission determines otherwise, we will continue to provide interference protection to the facilities specified in outstanding DTV construction permits issued to permittees operating pursuant to a DTV STA as of their applicable construction deadlines, in addition to protection to the allotted facilities.

C. City Grade Coverage

28. In the Fifth R&O we allowed DTV licensees to build initial facilities that placed the required DTV service level over their principal community of license. In turn, the required DTV service level was based on the level of service that they would provide at the edge of their authorized service areas (*i.e.,* at the edge of their NTSC Grade B contours) were they operating with full allotted DTV power and antenna height. In the R&O, we imposed a principal community coverage requirement that is stronger than the DTV service contour requirement that we adopted as an initial obligation in the Fifth R&O. We explained that the signal strength increase would improve the availability of service in the city of license and help prevent the migration of licensees from their community of license, thus furthering the purposes of section 307(b) of the Communications Act. The required level of service must be achieved by December 31, 2004 for commercial stations and December 31, 2005 for noncommercial stations. Operating DTV stations must be providing this level of service over their principal communities at that time.

29. We have decided to retain our enhanced principal community signal strength standard. The purpose of our revised requirement is to improve the availability and reliability of DTV service in the community of license and provide an extra measure of protection from interference to DTV service in the community. In addition, by requiring a higher level of service over the community of license, we will limit the extent to which licensees can migrate from their current service contour. These goals are consistent with the fundamental obligation of licensees to serve the needs and interests of their communities of license.

30. The 7dB increment in DTV service contour values that we adopted in the R&O was less than what we proposed in the NPRM. We explained that we chose a lower signal strength increase in order to provide broadcasters with flexibility in locating their transmitters while still improving the reliability of service to the community. While we recognized that some stations' currently authorized DTV facilities might not be able to encompass their principal communities with the increased city-grade signal level, we continue to believe that the less burdensome requirement that we adopted will not force many licensees to increase their power or to move their antenna. Even in cases where licensees have already constructed facilities that do not meet our increased city-grade coverage requirement, we believe that, given the location of most DTV towers, the cost of making the necessary changes to achieve compliance will be minimal in most instances.

D. Construction Deadlines

31. Despite the arguments made by a number of petitioners, we decline to issue a blanket extension of the remaining DTV construction deadlines. As noted above, the NAB survey notes that more than two-thirds of responding commercial stations expect to be on the air in digital format by May 2002. Thus, there is substantial evidence that the conversion is progressing and that television stations are working hard to construct digital facilities. In view of the number of stations that have already made a commitment to complying with our deadlines and that have made a substantial investment in conversion, we do not believe that a blanket extension of the remaining deadlines is appropriate. Further, given the reduced build-out requirements we adopt herein, and the clear additional protection we will afford stations meeting these requirements, we believe that a large number of the stations that did not anticipate meeting the deadline will now be able to do so. One leading manufacturer, for instance, states that it can equip a small market station with minimal DTV facilities (500 watts) for less than $160,000, depending upon the size of the coverage area or other signal propagation characteristics.

32. It is possible, however, that a number of stations will not be in a financial position to provide digital service by next May, even with the reduced initial build-out requirements, and will be forced to request an extension of time to construct. In view of the limited financial resources of many of these stations, we believe that it is appropriate at this time to reconsider our standards for granting DTV extension requests.

33. In the Fifth R&O, we announced our willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. We indicated that such circumstances include, but are not limited to, the inability to construct and place in operation a facility necessary for transmitting DTV, such as a tower, because of delays in obtaining

zoning or FAA approvals, or similar constraints, or the lack of equipment necessary to transmit a DTV signal. We stated explicitly that we did not anticipate that the circumstances of ''lack of equipment'' would include the cost of such equipment. However, we also stated that we would take into account problems encountered that are unique to DTV conversion and would modify our existing policies regarding extensions accordingly.

34. As indicated by a number of petitioners and commenters, we recognize that some broadcasters, despite their reasonable good faith efforts, may not be in a financial position to timely complete the construction of their DTV facilities. We also recognize that, particularly for stations in smaller markets, the capital costs of conversion may be very high relative to the station's anticipated revenue. As a result, stations with lower revenues may find it more difficult to cover these costs in time to meet the construction deadline.

35. For many broadcasters, these financial obstacles will be alleviated by the reduced initial build-out requirements we have adopted today. We expect that even smaller market stations generally should be able to afford to finance the minimum DTV facilities required under our rules. Some broadcasters, however, may be unable to complete construction of even these minimum permitted facilities by the applicable deadline. Accordingly, we have determined that we will consider, on a case-by-case basis, in addition to the extension criteria outlined in the Fifth R&O, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources. To qualify under this standard, the applicant must provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such an expenditure. We caution broadcasters that a brief downturn in the economy or advertising revenues will not be considered a sufficient showing of financial hardship. Rather, the showing must reflect the particular station's financial status over an economically significant period of time. In addition, the applicant must detail its good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing, and explain why those efforts were unsuccessful. To the extent that the applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. Applicants must retain underlying documentation fully detailing and supporting their financial representations as well as any steps taken to overcome the circumstances preventing construction. Applicants will also be required to indicate when they reasonably expect to complete construction.

36. Applicants seeking an extension of time to construct a digital television station must file their extension request with the Commission at least sixty days, but no more than ninety days, prior to the applicable construction deadline. The Mass Media Bureau will issue a standard form (FCC Form 337) to be used to apply for an extension of time to construct a DTV station. As under the current standard, the Commission staff may grant no more than two extensions to any permittee, each for a period not exceeding six months. We direct the Mass Media Bureau to examine closely each extension request under the standards we adopt today, and promptly to notify applicants of any denial of an extension so that the applicant can timely complete construction in order to meet the applicable construction deadline. Subsequent extension requests will be referred to the Commission.

E. Mutually Exclusive Applications

37. In the R&O, we decided to take a bifurcated approach to cut-off protection for DTV area expansion applications. With respect to all currently pending DTV expansion applications, we established cut-off protection as of the date of the adoption of the R&O (January 18, 2001). Thus, all DTV expansion applications pending as of the adoption date of the R&O are cut off and protected against later-filed DTV applications. We explained in the R&O that this approach would provide a measure of fairness to all applicants that filed DTV expansion applications prior to the adoption of the R&O by allowing all of them to be considered as part of one cut-off group. As for future DTV expansion applications filed after the adoption date of the R&O, we determined we would consider such applications cut-off as of the close of business on the day they are filed. We concluded that day-to-day cut-off processing for new DTV expansion applications would help to avoid a larger number of mutually exclusive (''MX'') applications and thus expedite processing of these applications and the provision of DTV service to the public. Day-to-day cut-off procedures also encourage potential applicants to file quickly for improved facilities, thereby speeding the introduction of improved DTV service to the public.

38. We find no reason to reverse our decision in this area. Our justification for adopting a single cut-off date rather than to utilize first-come first-serve processing with respect to the hundreds of pending DTV applications has not changed. In the R&O, we found that the main advantage of first-come first-serve processing—the elimination of mutually exclusive (MX) applications—would not be achieved in this case, as a large number of pending DTV applications were filed on certain critical DTV filing dates. Therefore, even if we were to have applied first-come first-serve processing, it would not have resulted in the elimination of numerous MX groups of applications that were filed on these dates. While Paxson and Fox both maintain that only a few of their applications were filed on these key dates, this does not change the fact that numerous other parties did file applications on those dates resulting in a large number of MX groups.

39. We reject Paxson and Fox's argument that adopting a single cut-off date was contrary to customary Commission processing procedures. As Barry Telecommunications, Inc. notes, the Commission has adopted a variety of different processing schemes over the years, each time determining that the particular scheme was appropriate for the service and circumstances in question, including single cut-off date lists, filing windows and first-come first-serve processing. Under the circumstances in this case, our approach to processing pending DTV applications, which balanced the needs of the licensees, the public and our interest in the orderly administration of spectrum, did not diverge from our prior practices.

40. As further justification for our decision, we recognized that there was an extended period of time over the several months leading to the adoption of the R&O during which we permitted DTV applications to be filed without indication that applicants needed to expedite their filings or lose out on an opportunity to expand their DTV allotments. Therefore, we found that first-come first-serve processing would unfairly prejudice those licensees, particularly smaller market and noncommercial educational licensees, that, as permitted, waited until their later deadlines to file their DTV applications. Contrary to the arguments raised by Paxson and Fox, we continue to find that the equities favor processing of the hundreds of DTV applications,

including expansion applications, which were timely filed in reliance on the Commission's processing system. Barry notes that the Commission's DTV processing system included publication of deadlines for the filing of DTV applications that would be considered on an equal footing with prior filings. Noncommercial educational licensees like Barry have invested substantial resources in their proposals and we agree that Paxson's and Fox's proposals are no more entitled to priority consideration than these later-filed applications. As Barry points out, the Commission never provided any applicant assurance of protection beyond that which was provided in the DTV Table of Allotments. Any applicant that is trying to maximize its allocation was never guaranteed success on that filing and has no claim to favorable action based simply on the timing of its application. Having considered and rejected the arguments of the petitioners, we affirm our application of a single cut-off date to the DTV applications pending on January 18, 2001.

41. In the R&O, we gave priority to pending DTV expansion applications over all NTSC applications except NTSC applications that fell into one of three special categories—post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut-off from further filings. These applications must have been accepted for filing in order to be protected from DTV expansion applications. We stated that, in the future, when an applicant files a DTV expansion application, it must determine whether there are NTSC applications on file in any of the three categories and provide interference protection to them. As for pending DTV expansion applications, when one conflicts with an NTSC application in one of these categories, we stated that we would treat the applications as mutually exclusive (''MX'') and follow the procedures adopted in the R&O for MX applications—that is, we will require that the parties resolve their MX within 90 days or we will subsequently dismiss both applications.

42. We revise the procedures announced in the R&O in the following respects. First, we note that, by application of section 309(l) of the Communications Act, pending NTSC application groups on file prior to July 1, 1997, are entitled to compete in an auction that does not include applications filed on or after July 1, 1997. Therefore, pursuant to that statutory directive, we may not find DTV expansion applications (all of which were filed after June 30, 1997) to be mutually exclusive with NTSC application groups on file prior to July 1, 1997, regardless of whether these groups involve locations inside or outside the freeze areas or whether or not the groups have been settled. This is the case also where there is an NTSC application that was cut-off as part of a group of NTSC applications filed before July 1, 1997, but that is now a singleton because the other applications in the group have been dismissed. NTSC applications in these two categories shall be protected against DTV maximization applications. We believe these revisions to the procedure address the concerns of KM and ALF. DTV maximization applicants will be permitted to file minor amendments to resolve conflicts with NTSC applications in these categories. In addition, our decision today does not affect the ability of those DTV broadcasters whose maximization applications may interfere with NTSC applications in these categories from applying to maximize at the close of the transition on their analog allotment.

F. Technical Issues

43. We have adopted a 2 percent de minimis interference standard for changes to DTV stations and allotments. In his petition for reconsideration, Donald G. Everist (Everist) seeks clarification regarding the analysis the Commission uses for determining whether the amount of interference caused by a DTV application to another DTV station is de minimis. Specifically, Everist is concerned with protection to a DTV station that has been authorized facilities that cover more people than the station's underlying DTV allotment (the Appendix B population) (DTV Table of Allotments, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 64 FR 4322, January 28, 1999, at Appendix B). Everist notes that predicted interference is to be determined to any people in the station's increased service area but indicates that the current Commission analysis seems to compare that interference population with the smaller Appendix B population to determine if the interference exceeds the 2% de minimis standard.

44. We clarify that the analysis comparison in this situation is to the station's Appendix B population, as Everist surmised. To the extent he is implying that the analysis should be changed, such a suggestion is beyond the scope of this reconsideration. The analysis was not adopted, altered, or even explained in the R&O. Furthermore, midstream changes to the analysis process raise issues of fair and consistent treatment of applicants and stations. It may be appropriate to consider a new approach at the time that protection of the Appendix B allotment ends. As decided elsewhere in this document, we are not currently establishing a date to end protection of that ''replication'' facility.

45. Fox also seeks clarification concerning the DTV interference analysis for determining that other DTV stations are protected. Fox urges the Commission to ''only protect the stronger of either the allotted facilities or the currently authorized facilities.'' Fox contends that protecting both makes the computation of protection unnecessarily complex by requiring analysis of all possible combinations of station facilities.

46. As Fox requests, we clarify that protection need not be determined for authorized DTV facilities that are smaller than, and encompassed by, the corresponding DTV allotment facilities. Specifically, applicants need not determine that protection is provided to other DTV station applications or authorizations that meet the technical criteria for ''checklist'' processing. The technical ''checklist'' criteria are: (1) proposed transmitter site within 5.0 kilometers of underlying DTV allotment reference coordinates, (2) proposed antenna HAAT not exceeding underlying DTV allotment HAAT by more than 10 meters, and (3) proposed ERP in every azimuthal direction not exceeding underlying DTV allotment ERP for that direction, (with a small ERP adjustment if the proposed HAAT differs from the DTV allotment HAAT). In general, a ''checklist'' application will produce a DTV service area that is contained within the replication service area of the underlying DTV allotment. In addition to ''checklist'' applications and authorizations, there are applications and resulting DTV authorizations that are considered ''checklist-like.'' These applications and authorizations do not meet one or more of the technical ''checklist'' criteria, but produce a DTV service area that is contained with the replication service area of the underlying DTV allotment. As with ''checklist'' applications and authorizations, ''checklist-like'' applications and authorization need not be protected by applications from other DTV stations. Protection of the underlying DTV allotment is required.

47. We note that the Fox request also could be interpreted to request a more extensive limitation on the DTV facilities that must be protected, and we do not find such a limitation warranted.

For example, a DTV station might have authorized facilities that are neither ''checklist'' nor ''checklist-like,'' where such authorization extends the underlying DTV allotment service contour in some directions and contracts the service contour in other directions. Under such a circumstance, the authorized contour would not be entirely contained within the allotment contour and conversely, the allotment contour would not be entirely contained within the authorized contour. One interpretation of the Fox request would be to only protect the authorized service if it reaches more people or area than the allotment. Similarly, that interpretation would only protect the allotment service if it reaches more people or area than the authorized facility. For two reasons, we are not accepting this more limited protection calculation. First, it is inconsistent with our decision in the replication section of the R&O. There we decide to continue to protect DTV allotment service. The Fox proposal would only continue that allotment protection if that service area or population is larger than the authorized (or applied for) service. Second, where a DTV authorization allows a service area to be shifted from the DTV allotment service area, we do not believe it is fair or appropriate to deny protection to that authorized service area if it reaches fewer people or less overall area than the allotment facility would reach.

48. We have established tables and formulas for determining maximum effective radiated power (ERP) limits for various antenna heights, channels and zones. In the R&O, we clarified our process for applying an alternative determination of a DTV station's maximum ERP based on matching the coverage area of the largest station in the market. We indicated that the provision is triggered only where a station in a market is covering a larger area than could be covered with standard maximum power and antenna height. KM seeks additional clarification regarding the reference to standard maximum power and antenna height, asking if it refers to the largest station in the market or to the DTV station proposing to maximize. KM also asks if the standard refers to the DTV Table of Allotment parameters, or some other parameters that may be permitted under the Commission's rules.

49. We clarify that the standard maximum facilities are the power and antenna height limits specified in § 73.622(f)(6)–(8) of our Rules. For example, for UHF DTV stations, the standard maximum ERP is 1000 kilowatts (kW) if the antenna HAAT is 365 meters (m) or less (365 m is approximately 1200 feet). For antennas located at higher HAATs, the standard maximum ERP is reduced, with the standard maximum UHF DTV ERP being 750 kW at an HAAT of 425 m and 316 kW at 610 m. We also clarify that the largest station provision is applied when a DTV application requests an ERP greater than the rule allows for its requested HAAT on its channel. Thus it is the standard maximum ERP of the DTV station proposing to maximize that triggers applicability of the ''largest station'' provision.

G. DTV Translators and Repeaters

50. As we stated in the R&O, while we recognize the desire to initiate DTV operations on translator and booster facilities, we believe there are fundamental issues surrounding their authorization and protection that must be addressed in a more comprehensive manner than can be accomplished based on the limited record on this issue in this proceeding. Accordingly, we will defer consideration of these issues to a separate rulemaking proceeding on digital LPTV, translator and booster stations. We hope to initiate this proceeding in the near future.

## IV. Conclusion

51. In this MO&O, we revise a number of the determinations we made in the R&O to ensure continued progress in the transition to digital broadcasting. By temporarily deferring the channel election and replication deadlines established in the R&O, and by extending interference protection to maximized service areas, our intention is to prioritize those elements that are most important to the DTV transition. Our primary goal is to maximize the number of DTV stations on the air and provide service to most, if not all, consumers. We believe that our actions today will help further the transition and promote the goal of replication by increasing the number of DTV stations on the air and the number of DTV receivers in the hands of consumers. Once set penetration rates increase, we believe that marketplace forces will provide further incentives that will result in the expansion of DTV service in the future.

## V. Administrative Matters

52. Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, as amended, the Commission's Supplemental Final Regulatory Flexibility Analysis has been completed and attached.

53. Paperwork Reduction Act Analysis. The actions taken in this MO&O have been analyzed with respect to the Paperwork Reduction Act of 1995 (''Act'') and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (''OMB'') as prescribed by the Act.

54. Comments. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this MO&O, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due February 19, 2002. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room C–1804, Washington, D.C. 20554, or via the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to *edward.springer@omb.eop.gov.*

## Supplemental Final Regulatory Flexibility Analysis

55. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM) and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the R&O. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were received in response to the IRFA or the FRFA. The present Supplemental Final Regulatory Flexibility Analysis (''Supplemental FRFA'') conforms to the RFA.

*A. Need for, and Objectives of, the Memorandum Opinion and Order on Reconsideration*

56. In January 2001, we released an R&O and Further Notice of Proposed Rule Making in MM Docket 00–39 (66 FR 9973, February 13, 2001) (R&O), addressing a number of issues related to the conversion of the nation's broadcast television system from analog to digital television (DTV). Among the issues addressed in the R&O were: when to require election by licensees of their post-transition DTV channel; whether to require replication by DTV licensees of their NTSC Grade B service contours (thereby providing coverage to those who receive the station's analog signal); whether to require DTV licensees to place enhanced service contours over their principal communities (thereby serving these communities with a stronger signal); and how we should process mutually exclusive applications. We expressed our belief that resolution of these issues would provide licensees with a measure of certainty that would help them plan facilities, order equipment, and arrange for construction of facilities, all of which will speed the transition to digital service.

57. We received a number of petitions for reconsideration of the R&O. In this Memorandum Opinion and Order on Reconsideration (MO&O), we revise a number of the determinations we made in the R&O, affirm other decisions, and provide clarification of certain rules and policies. We also modify, on our own motion, the minimum hours of operation of certain DTV stations and establish guidelines for television stations that may seek an extension of our May 1, 2002 and May 1, 2003 deadlines for construction of DTV facilities. We will resolve several major technical issues raised in the R&O and Further Notice of Proposed Rule Making, including the issues of receiver performance standards, DTV tuners, revisions to certain components of the DTV transmission standard, and labeling requirements for television receivers, in a separate Report and Order.

*B. Summary of Significant Issues Raised by Public Comments*

58. No comments were received in response to the IRFA, and no petitions or comments were received in response to the FRFA contained in the R&O. However, a number of parties that filed petitions for reconsideration or comments in response to the R&O and Further Notice of Proposed Rule Making raised concerns about the impact of the channel election and replication protection deadlines on broadcasters, and particularly broadcasters in smaller television markets. Generally, smaller market broadcasters assert that they will not be able to obtain the financing to construct DTV facilities sufficient to replicate their analog service area, and that they will not have sufficient operational experience by December 2004 (the channel election deadline for commercial stations) to determine which core channel is superior for DTV transmission.

59. In this MO&O, we respond to these concerns by allowing stations to construct more minimal initial DTV facilities designed to serve their communities of license while still retaining, for the time being, DTV interference protection to the full replication facility. We also temporarily defer the deadline by which broadcasters with two in-core allotments (television channels 2–52) must elect which channel they will eventually use for DTV at the end of the transition. In our next periodic review of the progress of the DTV transition, the Commission intends to establish a firm date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection of the unreplicated areas, and by which broadcasters with two in-core allotments must elect which channel they will use post-transition. These replication protection and channel election deadlines may be earlier than but will in no event be later than the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. In addition, we also allow DTV stations required to complete construction of DTV facilities by May 1, 2002 or May 1, 2003 to operate initially at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. In order to provide parity to analog UHF stations, we will also allow stations to construct initial DTV facilities that serve their principal communities while retaining DTV interference protection to their maximized service areas for the time being, subject to the interference protection deadline we intend to establish in the next periodic review.

60. We do not alter, however, our decision to require stations to provide a stronger DTV signal to their communities of license than that adopted as an initial requirement in the Fifth R&O in MM Docket 87–268 63 FR 135461, May 29, 1998). As established in the R&O, this new city-grade service requirement will become effective December 31, 2004 for commercial stations and December 31, 2005 for noncommercial stations. The majority of petitioners that addressed this issue did not object to the Commission's increased city grade signal requirement as long as it was implemented in conjunction with a waiver policy that affords broadcasters flexibility in certain circumstances. Some commenters pointed out that broadcasters face many different configurations of terrain and geography, not all of which lend themselves to siting towers that both provide the widest possible service and cast a stronger signal over the principal community. Other commenters noted that some broadcasters have already built DTV facilities that may have to be moved or expensively reconfigured to meet the new principal community coverage requirement.

61. The purpose of the stronger city-grade signal strength requirement is to improve the availability and reliability of DTV service in the community of license and provide an extra measure of protection from interference to DTV service in the community. In addition, by requiring a higher level of service over the community of license, we will limit the extent to which licensees can migrate from their current service contour. These goals are consistent with the fundamental obligation of licensees to serve the needs and interests of their communities of license. The 7dB increment in DTV service contour values that we adopted in the R&O was less than what we proposed in the NPRM. We explained that we chose a lower signal strength increase in order to provide broadcasters with flexibility in locating their transmitters while still improving the reliability of service to the community. While we recognized that some stations' currently authorized DTV facilities might not be able to encompass their principal communities with the increased city-grade signal level, we continue to believe that the less burdensome requirement that we adopted will not force many licensees to increase their power or to move their antenna. Even in cases where licensees have already constructed facilities that do not meet our increased city-grade coverage requirement, we believe that, given the location of most DTV towers, the cost of making the necessary changes to achieve compliance will be minimal in most instances.

62. We also received comments and petitions requesting an extension of the remaining deadlines (May 1, 2002 commercial and May 1, 2003 noncommercial) to complete

construction of DTV facilities. Generally, these parties argue that stations in smaller markets need additional time to plan and construct their DTV facilities given the expense involved in conversion and the lower level of profitability of these stations. Petitioners also argue that it is unreasonable to expect small market broadcasters to commence digital service in the midst of the uncertain market conditions created by, among other things, the issues surrounding the DTV transmission standard and the low rate of DTV receiver penetration. In addition, parties claim that many stations have yet to receive their DTV permits with only a few months left before the construction deadline, which has made it difficult for broadcasters to schedule highly-demanded tower construction crews and to coordinate the purchase of costly equipment. Several petitioners support extending the construction deadline to May 1, 2003 (the same deadline as noncommercial educational stations) for stations in markets 50–100, and to May 1, 2004 for stations in markets above 100. Others propose tying build-out requirements to a market-defined milepost, such as DTV receiver penetration levels.

63. In response to these views, we modify in the MO&O our guidelines for television stations that may seek an extension of our May 1, 2002 and May 1, 2003 deadlines for construction of DTV facilities, making extensions available to broadcasters that can demonstrate that the cost of meeting the minimum build-out requirements exceeds the station's financial resources.

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

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

65. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.

66. The digital television rules we address in the MO&O apply to commercial and noncommercial television stations. There are approximately 1,304 existing commercial television stations and 374 existing noncommercial television stations of all sizes that may be affected by the digital television rules addressed in the MO&O.

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

67. The MO&O directs the FCC's Mass Media Bureau to issue a standard form (FCC Form 337) to be used to apply for an extension of time to construct a DTV station. We estimate that it will take applicants 1 hour and 30 minutes to complete the form.

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

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

69. We made a number of determinations in the R&O that we believed would further progress on the transition from analog to digital television. Among other things, we established a deadline of December 31, 2003 by which commercial television stations that have both their NTSC and DTV operations on in-core channels must elect which of their two core channels to use for DTV operations after the transition. We gave non-commercial stations that have both their NTSC and DTV operations on in-core channels until the end of 2004 to elect their post-transition DTV channel. We determined that this early channel election would allow us to identify more quickly channels that will be available to accommodate DTV licensees with out-of-core transition channels as well as new entrants. In addition, to provide broadcasters with an incentive to provide full replication of NTSC coverage with DTV service, we determined that, after December 31, 2004, whatever portion of a commercial broadcaster's NTSC Grade B contour is not replicated with its digital television signal will cease to be protected in the DTV Table of Allotments. Noncommercial DTV licensees were given until December 31, 2005 in which to replicate or lose such DTV interference protection.

70. Upon further consideration, we determine in the MO&O that the channel election and replication requirements may be imposing substantial burdens on broadcasters, and especially on smaller stations, without sufficient countervailing public benefits, and may in fact be contributing to difficulties faced by a substantial number of stations, particularly smaller stations, in meeting their DTV construction deadlines. A survey conducted by NAB indicates that slightly less than one-third of all stations responding to the NAB survey anticipate that they will not be able to provide a digital signal by the May 2002 deadline. A larger percentage (81.9%) of responding stations in the top 50 markets (larger market stations) anticipate that they will meet the deadline, while a smaller percentage (49.1%) of stations in markets 100 and above (smaller-market stations) indicated they will complete construction on time. Three-quarters of those stations that do not anticipate meeting the May 2002 deadline indicated they plan to seek an extension of this deadline from the FCC. Generally, smaller market broadcasters that filed petitions in this proceeding assert that they are unable to obtain financing to construct DTV facilities sufficient to replicate their analog service area. These broadcasters also claim that they will not have sufficient operational experience by December 2004 to determine which core channel is superior for DTV transmission. Broadcasters that are not capable of constructing full replication facilities by the deadline established in the R&O may be postponing construction altogether.

71. Upon reconsideration, we decide in the MO&O to allow stations to construct initial DTV facilities designed to serve at least their communities of license, while still retaining DTV interference protection to provide full replication until such deadline as the Commission shall establish in its next periodic review of the progress of the DTV transition. Thus, we temporarily defer both the replication protection and channel election deadlines we established in the R&O. In our next periodic review of the progress of the

DTV transition, the Commission intends to establish a firm date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection of the unreplicated areas, and by which broadcasters with two in-core allotments must elect which channel they will use post-transition. These replication protection and channel election deadlines may be earlier than but will in no event be later than the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. In order to provide parity to analog UHF stations, many of which are smaller stations, we will also allow stations to construct initial facilities that serve their principal communities while retaining DTV interference protection to their maximized service areas until the maximization deadline to be established by the Commission in its next periodic review. This alternative significantly reduces the costs associated with constructing and operating initial DTV facilities as compared to the requirements adopted in the R&O.

72. In contrast, the Commission could have retained its channel election and replication protection deadlines established in the R&O. However, we have determined that those deadlines may be too burdensome, and that the Commission should reexamine what deadlines are appropriate in its next periodic review in light of the record developed in the interim regarding the progress of the DTV transition. The alternative selected herein works to benefit smaller stations by facilitating their compliance with the May 1, 2002 (commercial) and May 1, 2003 (noncommercial) construction deadlines.

73. The MO&O also allows stations required to construct and operate DTV facilities by May 1, 2002 or May 1, 2003 to operate initially in digital format at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. This alternative also significantly reduces the costs associated with initial operation of DTV facilities for these smaller stations. In contrast, the Commission could have retained the requirement for these stations that they operate in digital format whenever they transmit in analog format, greatly increasing their costs. Although the Commission considered reducing the minimum operating hours for all digital stations, we believe that the prime time obligation adopted in the MO&O for smaller stations appropriately balances our concern to reduce the burden on these broadcasters where possible with our goal of furthering progress in the transition to digital broadcasting.

74. In addition, in the MO&O we modify our guidelines for television stations that may seek an extension of the DTV construction deadlines. In the Fifth R&O, we announced our willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. We indicated that such circumstances include, but are not limited to, the inability to construct and place in operation a facility necessary for transmitting DTV, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints, or the lack of equipment necessary to transmit a DTV signal. We stated explicitly that we did not anticipate that the circumstances of ''lack of equipment'' would include the cost of such equipment.

75. As indicated by a number of petitioners and commenters, we recognize that some broadcasters, despite their reasonable good faith efforts, may not be in a financial position to timely complete the construction of their DTV facilities. Many stations are finding it difficult to obtain the substantial sums required to construct digital television facilities. Many stations are also experiencing decreasing revenues in part as a result of the slowdown in the overall economy, which has slowed even further in the wake of the events of September 11, 2001. We also recognize that, particularly for stations in smaller markets, the capital costs of conversion may be very high relative to the station's anticipated revenue. As a result, stations with lower revenues may find it more difficult to cover these costs in time to meet the construction deadline.

76. For some broadcasters, these financial obstacles may be alleviated by the reduced initial build-out requirements adopted in the MO&O. Other broadcasters, however, may be unable, for purely financial reasons, to complete construction of even these minimum permitted facilities by the May 1, 2002 deadline. Accordingly, in the MO&O we determine that we will consider, on a case-by-case basis, in addition to the extension criteria outlined in the Fifth R&O, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources. This new waiver standard should be particularly beneficial to smaller market broadcasters and those with fewer resources.

77. This relaxation of our extension standard will benefit small entities by giving additional leeway to stations in smaller markets that need more time to construct because of their lower revenues. By permitting these stations to delay the transition for a brief period of time, they will be able to spread the large investments needed to convert over more years. By delaying the transition for a short period for those stations that face the greatest financial challenges, these stations may also benefit from further progress overall in the transition, including greater consumer demand for digital television signals and greater advertising revenue.

78. We considered but declined in the MO&O to issue a blanket extension of the remaining DTV construction deadlines. It appears that more than two-thirds of commercial stations will be on the air in digital format by May 2002. Thus, there is substantial evidence that the conversion is progressing and that television stations are working hard to construct digital facilities. In view of the number of stations that have already made a commitment to complying with our deadlines and that have made a substantial investment in conversion, we do not believe that a blanket extension of the remaining deadlines is appropriate. Further, given the reduced build-out requirements we adopt herein, and the clear additional protection we will afford stations, including smaller stations, meeting these requirements, we believe that many of the stations that did not anticipate meeting the deadline will now be able and willing to do so.

**Report to Congress**

79. The Commission will send a copy of the MO&O, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the MO&O, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the MO&O and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

**VI. Ordering Clauses**

80. Pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303,

and 336(f), Part 73 of the Commission's rules, 47 CFR Part 73, ARE AMENDED as set forth in the Rule Changes below.

81. The amendments set forth in the Rule Changes SHALL BE EFFECTIVE February 19, 2002. FCC Form 337 contains information collection requirements that have not been approved by OMB. Public and agency comments on these information collections are due February 19, 2002. The FCC will publish a document announcing the effective date of FCC Form 337 once OMB approval is received.

82. The petitions for reconsideration or clarification received in response to the R&O *Are Granted* to the extent provided herein and otherwise *Are Denied*.

83. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this MO&O, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

84. This proceeding *Is Terminated*.

**List of Subjects in 47 CFR Part 73**

Television, broadcasting.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

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, and 336.

2. Section 73.623 is amended by revising paragraph (h) to read as follows:

**§ 73.623 DTV applications and changes to DTV allotments.**

* * * * *

(h) *DTV Application Processing.* (1) DTV applications for a construction permit or a modified construction permit pending as of January 18, 2001:

(i) Shall be afforded the interference protection set forth in paragraph (c) or (d) of this section, as applicable:

(A) By all NTSC minor change applications;

(B) By NTSC new station applications, except those covered by paragraphs (h)(1)(ii)(G) and (h)(1)(iii)(D) of this section;

(C) By all rulemaking petitions to amend the NTSC TV table of allotments;

(D) By DTV applications filed after January 18, 2001; and

(E) By rulemaking petitions to amend the DTV table of allotments filed after January 18, 2001;

(ii) Must demonstrate the requisite interference protection set forth in paragraph (c) or (d) of this section, as applicable, to:

(A) DTV licensed stations;

(B) DTV construction permits;

(C) Existing DTV allotments;

(D) Rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has passed prior to the filing date of the DTV application;

(E) NTSC stations with licenses covering construction permits that were granted before the DTV application was filed;

(F) NTSC construction permits that were granted before the DTV application was filed;

(G) Applications for new NTSC television stations that were in groups of mutually exclusive applications on file prior to July 1, 1997, regardless of whether they are the only applications that remain pending from their group.

(iii) That do not provide the requisite interference protection set forth in paragraph (c) or (d) of this section, as applicable, to the following applications and petitions will be deemed mutually exclusive with those applications and petitions:

(A) Other DTV applications pending as of January 18, 2001;

(B) Rulemaking petitions to amend the DTV table of allotments filed on or before January 18, 2001 for which a Notice of Proposed Rule Making had been released and the comment deadline specified therein had not passed prior to the filing date of the DTV application;

(C) Rulemaking petitions to amend the DTV table of allotments filed on or before January 18, 2001 for which a Notice of Proposed Rule Making had not been released; and

(D) Applications for new NTSC stations that are not covered by paragraph (h)(1)(ii)(G) of this section and were filed and accepted for filing on or before January 18, 2001 that:

(*1*) Were filed by post-auction winners pursuant to § 73.5005.

(*2*) Are part of a settlement agreement on-file with the Commission that would result in the grant of the NTSC application; or

(*3*) Are cut-off singletons.

(2) DTV applications for a construction permit or a modified construction permit filed after January 18, 2001:

(i) Shall be afforded the interference protection set forth in paragraph (c) or (d) of this section, as applicable:

(A) By all NTSC minor change applications;

(B) By NTSC new station applications, except those covered by paragraph (h)(2)(ii)(H) and (I) of this section;

(C) By all rulemaking petitions to amend the NTSC TV table of allotments except those filed by NTSC applicants in those groups defined in (h)(2)(ii)(I) of this section for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has passed prior to the filing date of the DTV application;

(D) By later-filed DTV applications; and

(E) By later-filed rulemaking petitions to amend the DTV table of allotments;

(ii) Must demonstrate the requisite interference protection set forth in paragraph (c) or (d) of this section, as applicable, to:

(A) DTV licensed stations;

(B) DTV construction permits;

(C) Earlier-filed DTV applications;

(D) Existing DTV allotments;

(E) Rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has passed prior to the filing date of the DTV application;

(F) NTSC stations with licenses covering construction permits that were granted before the DTV application was filed;

(G) NTSC construction permits that were granted before the DTV application was filed; and

(H) Earlier-filed and accepted for filing applications for new NTSC stations that are not covered by paragraph (h)(2)(ii)(I) of this section, and that:

(*1*) Were filed by post-auction winners pursuant to § 73.5005.

(*2*) Are part of a settlement agreement on-file with the Commission that would result in the grant of the NTSC application; or

(*3*) Are cut-off singletons;

(I) Applications for new NTSC television stations that were in groups of mutually exclusive applications on file prior to July 1, 1997, regardless of whether they are the only applications that remain pending from their group;

(J) Rulemaking petitions to amend the NTSC table of allotments filed by applicants defined in (h)(2)(ii)(I) of this section for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has

passed prior to the filing of the DTV application.

(iii) That do not provide the requisite interference protection set forth in paragraph (c) or (d) of this section, as applicable, to the following applications and petitions will be deemed mutually exclusive with those applications and petitions:

(A) Other DTV applications filed the same day;

(B) Rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making had been released and the comment deadline specified therein had not passed prior to the filing date of the DTV application; and

(C) Earlier-filed rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making had not been released.

(3) DTV applicants, DTV applicants and NTSC applicants, or DTV applicants and DTV rulemaking petitioners that are mutually exclusive pursuant to this section will be notified by Public Notice and provided with a 90-day period of time to resolve their mutual exclusivity via engineering amendment or settlement. Those applications and petitions that remain mutually exclusive upon conclusion of the 90-day settlement period will be dismissed.

3. Section 73.624 is amended by revising paragraphs (b), (d)(3)(ii), and (d)(3)(iv) to read as follows:

**§ 73.624 Digital television broadcast stations.**

* * * * *

(b) DTV broadcast station permittees or licensees must transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel. Until such time as a DTV station permittee or licensee ceases analog transmissions and returns that spectrum to the Commission, and except as provided in paragraph (i ) of this section; at any time that a DTV broadcast station permittee or licensee transmits a video program signal on its analog television channel, it must also transmit at least one over-the-air video program signal on the DTV channel. In addition, the DTV broadcast station permittee or licensee is subject to the simulcasting requirements in paragraph (f) of this section. The DTV service that is provided pursuant to this paragraph must be at least comparable in resolution to the analog television station programming transmitted to viewers on the analog channel.

(1) DTV broadcast station permittees or licensees required to construct and operate a DTV station by May 1, 2002 or May 1, 2003 pursuant to paragraph (d) of this section must, at a minimum, beginning on the date on which the DTV station is required to be constructed, provide a digital video program signal, of the quality described in paragraph (b) above, during prime time hours as defined in § 79.3(a)(6) of this chapter. These licensees and permittees must also comply with the simulcasting requirements in paragraph (f) of this section.

(2) DTV licensees or permittees that choose to commence digital operation before the construction deadline set forth in paragraph (d) of this section are not subject to any minimum schedule for operation on the DTV channel.

* * * * *

(d) * * *

(3) * * *

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

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

(B) the lack of equipment necessary to obtain a digital television signal; or

(C) where the cost of meeting the minimum build-out requirements exceeds the station's financial resources.

* * * * *

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

* * * * *

4. Section 73.625 is amended by revising paragraph (a)(1) to read as follows:

**§ 73.625 DTV coverage of principal community and antenna system.**

(a) * * *

(1) The DTV transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, the following minimum F(50,90) field strength in dB above one uV/m will be provided over the entire principal community to be served:

| | |
|---|---|
| Channels 2–6 | 35 dBu |
| Channels 7–13 | 43 dBu |
| Channels 14–69 | 48 dBu |

**Note to paragraph (a)(1):** These requirements above do not become effective until December 31, 2004 for commercial television licensees and December 31, 2005 for noncommercial television licensees. Prior to those dates, the following minimum F(50,90) field strength in dB above one uV/m must be provided over the entire principal community to be served:

| | |
|---|---|
| Channels 2–6 | 28 dBu |
| Channels 7–13 | 36 dBu |
| Channels 14–69 | 41 dBu |

BILLING CODE 6712–01–P

**Appendix—Form 337**

**Note:** This appendix will not appear in the Code of Federal Regulations.

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
3060-XXXX

# APPLICATION FOR EXTENSION OF TIME TO CONSTRUCT A DIGITAL TELEVISION BROADCAST STATION

## GENERAL INSTRUCTIONS

A. This FCC Form is to be used by all permittees to apply for an extension of time within which to construct a commercial or noncommercial educational digital television (DTV) broadcast station. The DTV construction timetable established by the Commission is set forth in 47 C.F.R. Section 73.624(d)(1). FCC Form 337 should be filed at least 60 days, but no more than 90 days, prior to the applicable construction deadline. See 47 C.F.R. Section 73.624(d)(3).

B. Electronic Filing of Application Forms. The Commission is currently developing electronic versions of various broadcast station application and reporting forms, such as this application form. As each application form and report goes online, the Commission will by Public Notice announce its availability and the procedures to be followed for accessing and filing the application form or report electronically via the Internet. For a six-month period following the issuance of the Public Notice, the subject application form or report can be filed with the Commission either electronically or in a paper format. Electronic filing will become mandatory, on a form-by-form basis, six months after each application form or report becomes available for filing electronically.

C. Applicants that prepare this application in paper form should file an original and two copies of this application and all exhibits. Applicants should follow the procedures set forth in Part 0 (Commission Organization) and Part 73 (Radio Broadcast Services) of the Commission's Rules, which are set forth in Title 47 of the Code of Federal Regulations.

D. Applicants should provide all information requested by this application. If any portions of the application are not applicable, the applicant should so state. **Defective or incomplete applications will be returned without consideration.** Inadvertently accepted applications are also subject to dismissal.

E. In accordance with 47 C.F.R. Section 1.65, applicants have a continuing obligation to advise the Commission, through amendments, of any substantial and material changes in the information furnished in this application. This requirement continues until the FCC action on this application is no longer subject to reconsideration by the Commission or review by any court.

F. A copy of the completed application and all related exhibits shall be made available for inspection by the public in the applicant's public inspection file pursuant to 47 C.F.R. Sections 73.3526 or 73.3527, unless the applicant requests confidentiality consistent with 47 C.F.R. Section 0.459.

G. **The applicant must sign the application.** Depending on the nature of the applicant, the application should be signed as follows: if a sole proprietorship, personally; if a partnership, by a general partner; if a corporation, by an officer; for an unincorporated association, by a member who is an officer; if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction. Counsel may sign the application for his or her client, but only in cases of the applicant's disability or absence from the United States. If the application is filed electronically, the signature will consist of the electronic equivalent of the typed name of the individual. See Report and Order in MM Docket No. 98-43. 13 FCC Rcd 23056, 23064 (1998), on reconsideration, 14 FCC Rcd 17525 (1999).

## QUESTION-BY-QUESTION INSTRUCTIONS

A. **Item 1: Applicant Name.** The legal name of the applicant must be stated exactly in Item 1. If the applicant is a corporation, the applicant should list the exact corporate name; if a partnership, the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his/her office, and the name of the association; and, if an individual applicant, the person's full legal name.

Applicants should use only those state abbreviations approved by the U.S. Postal Service.

FCC Registration Number (FRN). To comply with the Debt Collection Improvement Act of 1996, the applicant must enter its FRN number, a ten-digit unique entity identifier for anyone doing business with the Commission. The FRN can be obtained through the FCC webpage at http://www.fcc.gov or by manually submitting FCC Form 160. FCC Form 160 is available for downloading from http://www.fcc.gov/formpage.html or by calling 1-800-418-3676. Questions concerning the FCC Registration Number can be directed to the Commission's Registration System help desk at http://www.CORES@fcc.gov or by calling 1-877-480-3201.

Facility ID Number. TV Facility ID Numbers can be obtained at the FCC's Internet Website at www.fcc.gov/mmb. Once at this website, scroll down and select CDBS Public Access. You can also obtain your TV Facility ID Number by calling (202) 418-1600. Further, the Facility ID Number is now included on all TV authorizations and postcards.

B. **Item 2: Contact Representative.** If the applicant is represented by a third party (for example, legal counsel), that person's name, firm or company, mailing address and telephone/electronic mail address may be specified in Item 2.

C. **Item 3. Facility Information.** This question asks the applicant to specify: (1) whether commercial or noncommercial educational DTV operation is proposed; and (2) the community to which the station will be licensed.

D. **Item 4: Purpose of Application.** This question asks whether FCC Form 337 is being filed for additional time within which to construct a new DTV station or to modify the facilities authorized in an outstanding construction permit. It also requires that the applicant identify the permit covered.

E. **Item 5: Reason for Delay in Construction.** In the Fifth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997), on reconsideration, 13 FCC Rcd 6860 (1998), the Commission announced its willingness to grant, on a case-by-case basis, an extension to the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. The Commission also stated that it would modify its existing policies regarding extensions, taking into account problems encountered that are unique to the DTV conversion.

In responding to this question, the applicant should attest to the nature of the problem(s) preventing the timely completion of construction and provide a detailed explanation of the reason(s) requiring an additional time to construct its station's DTV facilities.

Among the problems found in specific instances to warrant the granting of additional time to construct have been such technical obstacles as equipment delivery delays, unavailability of work or tower crews, and tower safety and other construction delays; and such legal obstacles as delays in obtaining required governmental (e.g., FAA, Canadian and Mexican) clearances, outstanding judicial litigation involving zoning, and the pendency of DTV channel change rulemakings and DTV construction permit applications. See Digital Television Construction Deadline, 16 FCC Rcd 8122 (2001). In addition, such natural disasters as floods, tornadoes, hurricanes, earthquakes and other calamities would be unforeseeable events warranting additional time to construct. Finally, in Memorandum Opinion and Order on Reconsideration (MM Docket No. 00-39), FCC 01-330 (adopted November 8, 2001), the Commission recognized that some broadcasters, despite their reasonable, good faith efforts and the Commission's reduced build-out requirements, may be financially unable to timely complete the construction of their DTV facilities. The Commission will therefore consider, on a case-by-case basis, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements would create an undue financial hardship. In this regard, the applicant should provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such an expenditure. The applicant should also describe its good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing, and why those efforts were unsuccessful. To the extent that an applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. See 47 C.F.R. Section 0.459.

**NOTE: Underlying documentation need not be filed with FCC Form 337. However, such documentation fully detailing and supporting the representations and descriptions provided in response to question 5 and, if applicable, question 6 below shall be kept at the station for as long as the extension of time is in effect and shall be made available upon request by the Commission. With respect to a station's claimed financial condition, the applicant should have available an audited profit and loss statement for its most recent fiscal year at the time of the filing of FCC Form 337 or similar probative financial documentation.**

F. **Item 6: Most Recent Construction Period.** Where the station had previously received an extension of time to construct, the "most recent construction period" is the period between the grant date and the expiration date of the latest extension. This application for extension of time will be evaluated according to the progress and efforts made, or circumstances which occurred, during the most recent construction period. See, Rainbow Broadcasting Company, 11 FCC Rcd 1167 (1995).

G. **Item 7: Construction Completion Date.** In accordance with its station's DTV construction plan, the applicant should set forth the date by which it reasonably expects, under its circumstances, to complete construction. Pursuant to the Commission's rules, the staff may grant no more than two, six-month extensions of time to construct DTV facilities. See 47 C.F.R. 73.624(d)(3). Where the applicant is unable now to project its

anticipated construction completion date, it should describe the reasonable, good faith measures it is and will be taking to expeditiously resolve its incapacity to construct the station's DTV facilities.

H. **Item 8: Anti-Drug Abuse Act Certification.** This question requires the applicant to certify that neither it nor any party to the application is subject to denial of federal benefits pursuant to the Anti-Drug Act of 1988, 21 U.S.C. Section 862.

Section 5301 of the Anti-Drug Abuse Act of 1988 provides federal and state court judges the discretion to deny federal benefits to individuals convicted of offenses consisting of the distribution or possession of controlled substances. Federal benefits within the scope of the statute include FCC authorizations. A "Yes" response to Item 8 constitutes a certification that neither the applicant nor any party to this application has been convicted of such an offense or, if it has, it is not ineligible to receive the authorization sought by this application because of Section 5301.

**NOTE:** With respect to this question, the term "party to the application" includes if the applicant is an individual, that individual; if the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5 percent or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; all members if a membership association; and if the applicant is a partnership, all general partners and all limited partners, including both insulated and non-insulated limited partners, holding a 5 percent or more interest in the partnership.

**FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT**

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information provided in the application to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection.

If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on this form, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authorization.

We have estimated that each response to this collection of information will take 1 hour and 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-XXXX), Washington, DC 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Please DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number of if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-XXXX.

**THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. Section 3507.**

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
3060-XXXX

FOR FCC USE ONLY

# FCC 337

## APPLICATION FOR EXTENSION OF TIME TO CONSTRUCT A DIGITAL TELEVISION BROADCAST STATION

FOR COMMISSION USE ONLY
FILE NO.

1.

| Legal Name of the Applicant | | | |
|---|---|---|---|
| Mailing Address | | | |
| City | | State or Country (if foreign address) | ZIP Code |
| Telephone Number (include area code) | | E-Mail Address (if available) | |
| FCC Registration Number | Call Sign | Facility Identifier | |

2.

| Contact Representative (if other than Applicant) | | Firm or Company Name | |
|---|---|---|---|
| Mailing Address | | | |
| City | | State or Country (if foreign address) | ZIP Code |
| Telephone Number (include area code) | | E-Mail Address (if available) | |

3. **Facility Information.**

a. ☐ Commercial b. ☐ Noncommercial Educational

c. Community of License:

| City | State |
|---|---|
| | |

4. **Purpose of Application.** Applicant requests an extension of time in which to complete the construction authorized pursuant to (check one):

☐ a permit for a new DTV station Permit No. _____ Expiration Date _____

☐ a modification of a DTV construction permit Permit No. _____ Expiration Date _____

5. Applicant certifies that construction cannot be completed due to (check all that apply):

☐ technical (e.g., equipment delays)

☐ legal (e.g., litigation)

☐ financial (e.g.,inability to finance)

☐ other reasons (e.g., natural disasters)

Describe in an Exhibit the specific reason(s) requiring additional time to construct, including the steps taken by the applicant to solve or mitigate the problem(s). Exhibit No. 1

6. Has the construction period for this station been previously extended? ☐ Yes ☐ No

a. If Yes, describe in an Exhibit the applicant's diligent efforts during the most recent construction period to overcome the circumstance(s) preventing construction. Exhibit No. 2

7. Applicant requests that the time within which to complete construction be extended until: _____

a. If applicant is not able to state now when construction is expected to be completed, describe in an Exhibit the reasonable steps it is taking to resolve the problem(s) preventing timely construction. Exhibit No. 3

8. **Anti-Drug Abuse Act Certification.** Applicant certifies that neither applicant nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862. ☐ Yes ☐ No

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

| Typed or Printed Name of Person Signing | Typed or Printed Title of Person Signing |
|---|---|
| Signature | Date |

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

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