

SUPPORTING STATEMENT

A. Justification:

1. On February 11, 2009, the DTV Delay Act was signed by the President and enacted into law, extending the nationwide DTV transition date from February 17 until June 12, 2009. As a result, after June 12, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals,¹ except for limited analog “nightlight” service.² The DTV Delay Act directs the Commission to take any actions “necessary or appropriate to implement the provisions, and carry out the purposes” of the DTV Delay Act, and to do so within 30 days.³ Congress extended the transition date in order to permit analog service to continue until consumers have had additional time to prepare.⁴ But Congress also directed the Commission to provide flexibility for stations wanting to transition prior to the new date.⁵ Stations may have made extensive preparations for a February 17 digital transition and some may have difficulty altering their commitments at this time. The Commission’s challenge is to provide opportunities for some stations to end analog broadcasting early without sacrificing the goal of giving consumers additional time to prepare.

¹ See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009). The DTV Delay Act (to be codified at 47 U.S.C. §§ 309(j)(14) and 337(e)), amends Section 309(j)(14) of the Communications Act to establish June 12, 2009 as the new nationwide deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A) (“A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond June 12, 2009.”). See also 47 U.S.C. § 337(e)(1) (“Any full-power television station licensee that holds a television broadcast license to operate between 698 and 806 megahertz may not operate at that frequency after June 12, 2009.”).

² See the Short-term Analog Flash and Emergency Readiness Act, Pub. L. No.110-459, 122 Stat. 5121 (2008) (“Analog Nightlight Act”).

³ DTV Delay Act § 4(c) (“Notwithstanding any other provision of law, the Federal Communications Commission . . . shall, not later than 30 days after the date of enactment of this Act, each adopt or revise its rules, regulations, or orders or take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act and the amendments made by this Act.”). In addition, the DTV Delay Act amends the Digital Television and Public Safety Act of 2005 (“DTV Act”), Pub. L. No. 109-171, 120 Stat. 4 (2006), to direct the Commission to “take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by June 13, 2009; and (2) to require by June 13, 2009, . . . all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).” 47 U.S.C.A. § 309 Note.

⁴ See, e.g., Cong. Rec. H895 (daily ed. February 4, 2009).

⁵ DTV Delay Act, § 4(a) (“PERMISSIVE EARLY TERMINATION UNDER EXISTING REQUIREMENTS.— Nothing in this Act is intended to prevent a licensee of a television broadcast station from terminating the broadcasting of such station’s analog television signal (and continuing to broadcast exclusively in the digital television service) prior to the date established by law under section 3002(b) of the Digital Television Transition and Public Safety Act of 2005 for termination of all licenses for full-power television stations in the analog television service (as amended by section 2 of this Act) so long as such prior termination is conducted in accordance with the Federal Communications Commission’s requirements in effect on the date of enactment of this Act, including the flexible procedures established in the Matter of Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television (FCC 07–228, MB Docket No. 07–91, released December 31, 2007”).

Title: Viewer Notification Requirements in Third DTV Periodic Report and Order, FCC 07-228

February 5 Public Notice.⁶ On February 5, 2009, the Commission released a Public Notice, FCC 09-6 (“February 5 Public Notice”), in which it granted a partial waiver of the Third DTV Periodic Report and Order, FCC 07-228 (2007), to permit television broadcast stations to cease analog broadcasting on February 17, 2009, despite the extension of the national DTV transition deadline to June 12, 2009 pursuant to the DTV Delay Act. This public notice permitted stations wanting to terminate analog service on February 17, 2009 (the previous nationwide transition date) this opportunity to do so by requiring them to broadcast, prior to termination, the equivalent of 30 days worth of “viewer notifications”⁷ and also stations were required to broadcast a “7-day crawl” viewer notification to be aired in the final seven days leading up to February 17, 2009.

REVISED INFORMATION COLLECTION REQUIREMENT WHICH NEEDS OMB REVIEW AND APPROVAL:

“7-day crawl” Viewer Notification. As a condition of the waiver to terminate analog signal transmission on February 17, 2009, and if technically feasible, stations were required to broadcast a crawl on their analog channel regarding the station’s termination of analog service, for the seven day period from February 10 (11:59 p.m. EST) through the termination of the station’s analog signal on February 17 (11:59 p.m. EST). For the first five days, the crawl must be aired for 5 minutes of every hour of the station’s analog broadcast day, including during primetime; and for the final two days, the crawl must be aired for 10 minutes of every hour of the station’s analog broadcast day, including during primetime. Stations that lack the technical capability to air crawls must instead air information about the station’s termination of analog service on February 17 in an alternative format for a comparable duration.

INFORMATION COLLECTION REQUIREMENTS THAT HAVE NOT CHANGED SINCE LAST APPROVED BY OMB:

Congress has mandated that after June 12, 2009,⁸ full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. On December 22, 2007, the Commission adopted a Report and Order, *In the Matter of the Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, FCC 07-228 (“Third DTV Periodic Report and Order”) to establish the rules, policies and procedures necessary to complete the nation’s transition to DTV. In the Report and Order, the Commission adopted rules to ensure that, by the transition date, all full-power television

⁶ Public Notice, “FCC Announces Procedures Regarding Termination of Analog Television Service On or After February 17, 2009,” FCC 09-6 (rel. Feb. 5, 2009) (“February 5 Public Notice”).

⁷ This was an existing requirement for early terminators. Stations terminating on February 17 became early terminators upon enactment of the DTV Delay Act. Approval for this non-substantial change to this existing collection was approved by OMB on February 10, 2009 as a result of the nationwide transition date change.

⁸ This submission will cover any future date extensions that occur for this collection due to the DTV transition.

broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, full-authorized post-transition (DTV) facility. The Commission recognized that broadcasters may need regulatory flexibility in order to achieve these goals. Accordingly, the Commission affords broadcasters the opportunity for regulatory flexibility, if necessary, to meet their DTV construction deadlines. The Commission, however, must also ensure that no consumers are left behind in the DTV transition. Therefore, the Commission requires broadcasters that choose to reduce or terminate TV service to comply with viewer notification requirements.

Specifically, as a result of the Third DTV Periodic Report and Order, stations must comply with a viewer notification requirement (i.e., stations must notify viewers about their planned service reduction or termination) if:

- (1) The station will permanently reduce or terminate analog or pre-transition digital service before the transition date; or
- (2) The station will not serve at least the same population that receives their current analog TV and DTV service after the transition date.

Viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30/60-days prior to the station's termination of full, authorized analog service. These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service or the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received; (5) information about the availability of digital- to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

2. Information will be provided to consumers by full-power television broadcasters to notify their viewers about a planned TV service reduction or termination.

3. Broadcasters will provide the required information to their viewers via their regular over-the-air broadcast signal. Such viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30/60 days prior to the station's planned TV service

reduction or termination.

4. This agency does not impose a similar information collection on the respondents. There are no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. This collection is required only for stations seeking regulatory relief from the construction deadlines set for completion of post-transition facilities. We do expect several small broadcasters to request such relief and therefore this information collection requirement will impose some costs on small broadcasters. This collection, however, is needed to ensure that broadcasters, small and big alike, continue to retain their audiences after the transition by fully informing viewers of the steps necessary to keep watching. Small broadcasters rely completely on their viewing audience for their revenue stream, so this benefit should far outweigh any costs for this temporary requirement.

6. Congress has mandated that after June 12, 2009, full -power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. There is a clear and compelling need for educational efforts directed toward consumers. If the Commission does not take action to ensure that viewers are informed about stations' planned TV service reduction or termination, some consumers may lose television service.

7. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. The Commission filed a request with OMB to waive Federal Register notice seeking public comment for the new information collection requirements contained in this supporting statement due to short time frame provided for the Commission to act, and because PRA approval is needed to allow stations to make notifications immediately.

9. No payment or gift was provided to the respondents.

10. There is no need for confidentiality with this collection of information.

11. This collection of information does not address any private matters of a sensitive nature.

12. We estimate that 500 full-power television broadcast stations will cease analog broadcasting on February 17, 2009. These stations were required to broadcast a “7-day crawl” viewer notification to be aired in the final seven days leading up to February 17, 2009. For the first 5 days of the crawl viewer notification, the Commission estimates that stations will broadcast the crawl for 5 minutes every hour for a 24 hour time period. For the remaining 2 days, stations will broadcast the crawl for 10 minutes every hour for a 24 hour time period. Therefore, the burden is calculated as follows:

Number of Annual Respondents: 500 full power TV Broadcast Stations

Number of Annual Responses:

500 stations x 24 notifications/day x 7 days = **84,000 required notifications**

Annual Burden Hours for Respondent:

.084 hours (5 minutes) x 24 hours = 2 hours x 5 days of broadcasting = 10 hours

.166 hours (10 minutes) x 24 hours = 8 hours x 2 days of broadcasting = 8 hours
18 hours

500 full power television broadcast stations x 18 hours/station = **9,000 hours**

We also estimate that there are approximately 1,050 full-power television broadcast stations that have not reported completion of their transition to DTV and, therefore, may need to pursue the provisions for regulatory relief that would require the viewer notifications at issue. The collection requires four (4) on-air notices per day for at least 30/60 days. We estimate that the station will spend 0.01 hours each keeping records for this information and 0.33 hours (20 minutes) each meeting with outside counsel. These requirements are for a total of 30/60 days and, once the respondent has fulfilled the 30/60-day requirements, the respondent satisfied its obligation under the collection. These estimates are based on FCC staff’s knowledge and familiarity with the availability of the data required.

Number of Annual Respondents:

- **1,050 full power TV broadcast stations**

Number of Annual Responses: 174,000 (78,000 + 96,000).

- 400 stations x 4 notices/day/station x 60 days = **96,000 notices (responses)**⁹
 - 650 stations x 4 notices/day/station x 30 days = **78,000 notices (responses)**¹⁰
- 174,000 notices (responses)**

Annual Burden Hours for Respondents:

- **On Air Time:** We estimate that viewer notifications will require four minutes of air time per notice for the 60-day notices. Therefore, 400 stations x 4 notices/day/station x 0.067 hours (four minutes)/notice x 60 days = 6,432 hours.

We also estimate that viewer notifications will require four minutes of air time per notice for the 30-day notices. Therefore, 650 stations x 4 notices/day/station x 0.067 hours (four minutes)/notice x 30 days = 5,226 hours.

Therefore, the on air time burden is 6,432 hours + 5,226 hours = **11,658 hours to air notices.**

- **Recordkeeping:** We estimate that it will take each respondent around 0.01 hours to comply with the recordkeeping requirement.¹¹ Therefore, **10 hours** of total recordkeeping for collection for all respondents.
- **Consultation Time:** We estimate that each respondent will consult with an outside attorney for 20 minutes¹² to meet and provide information that will enable the outside attorney to prepare the viewer notifications. This notification will be played over a one to two month period. Therefore, each respondent will have a total of 0.33 hours of consulting time - 1,050 stations x 0.33 hours/respondent to provide necessary information to counsel = **347 hours.**

⁹ Stations that request STA approval to permanently reduce or terminate their analog service before the transition date must provide their viewers with on-air notifications every day for the 60-day period prior to the planned service reduction or termination.

¹⁰ These are the other notifications or STA requests to reduce or terminate TV service require the station to provide their viewers with on-air notifications every day for the 30-day period prior to the planned service reduction or termination.

¹¹ This estimate is minimal due to the recordkeeping requirement being kept on the station's tapes as proof that the requirement was meant.

¹² The burden is very minimal to the respondent.

OMB Control Number: 3060-1117

February 2009

Title: Viewer Notification Requirements in Third DTV Periodic Report and Order, FCC 07-228

TOTAL ANNUAL NUMBER OF RESPONDENTS: 500 + 1,050 = 1,550

TOTAL NUMBER OF ANNUAL RESPONSES: 84,000 + 174,000 = 258,000

TOTAL ANNUAL BURDEN HOURS:

9,000 + 11,658 hours + 10 hours + 347 hours = 21,015 hours

TOTAL ANNUAL "IN-HOUSE COST": We estimate that the respondents would have an average salary of \$100,000/year (\$48.08/hour).

21,015 hours x \$48.08/hour = \$1,010,401.20

13. Annual Cost Burden:

- (a) Total annualized capital/startup costs: None.
- (b) Total annual costs (O&M): **\$310,000**. We assume that the station would contract an attorney to prepare the viewer notifications. We estimate that it will take 1 hour to prepare the viewer notification. The attorney would have an average salary of \$200/hour. Therefore: 1,550 stations x 1 notice prepared by the attorney for each station which will be played over a seven day or one month period x \$200/hour = \$310,000.
- (c) Total annualized cost requested: **\$310,000**.

14. There is no cost to the Federal Government.

15. There are program changes to the annual burden hours +9,000 hours and annual cost burden + \$100,000. These program changes are due to the Commission releasing a public notice, FCC 09-6 which contained a revised information collection requirement which impacted this collection.

16. The data will not be published.

17. OMB approval of the expiration date of the information collection will be displayed at 47 CFR, Section 0.408.

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

OMB Control Number: 3060-1117

February 2009

**Title: Viewer Notification Requirements in Third DTV Periodic Report and Order, FCC
07-228**

No statistical methods are employed.