



PUBLIC NOTICE

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FCC 09-7
February 11, 2009

FCC Requires Public Interest Conditions for Certain Analog TV Terminations on February 17, 2009

Certain Stations Must Respond By Friday, February 13, 2009

On February 5, 2009, the Commission released a Public Notice, FCC 09-6 (“*February 5th Public Notice*”), in which it granted a partial waiver of the *Third DTV Periodic Report and Order* 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.¹ In the *February 5th Public Notice*, the Commission reserved the right to limit or reconsider the partial waiver if we determine that analog termination on February 17 by a station or group of stations is contrary to the public interest.² As explained in the *February 5th Public Notice*, the primary concern of the Commission is to ensure that viewers relying on over-the-air television do not lose access to local news, public affairs and emergency information before they are ready for the full power television transition to all-digital television service. It was this concern that prompted the Congress to delay the digital transition until June 12, 2009, and it is this concern that prompts our action here.

We have now reviewed the 491 termination notices filed by the stations intending to end analog service on February 17, 2009.³ We find that 368 of these stations may proceed with their intended termination of analog service on February 17th. We remind these stations of their obligations to provide viewer notifications and continuous crawls before they terminate their analog service on Tuesday, February 17, 2009.⁴ Over 100 stations indicated that they will

¹ Public Notice, “FCC Announces Procedures Regarding Termination of Analog Television Service On or After February 17, 2009; Termination Notifications for February 17, 2009 Must Be Filed By Monday, February 9,” FCC 09-6 (rel. Feb. 5, 2009) (“*February 5th Public Notice*”). See also *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Report and Order, 23 FCC Rcd 2994 (“*Third DTV Periodic Report and Order*”).

² *Id.* at p. 3-4.

³ Public Notice, “FCC Releases Lists of Stations Whose Analog Operations Terminate Before February 17, 2009 or that Intend to Terminate Analog Operations on February 17, 2009,” DA 09-221 (MB rel. Feb. 10, 2009) (“*February 17, 2009 Termination List Public Notice*”).

⁴ See *February 5th Public Notice*, *supra* note 1, at p. 4-6.

provide nightlight-type service for at least two weeks on their analog channel. This nightlight service should include DTV education and emergency information, as needed. We also strongly urge these stations to increase their local outreach efforts in their communities. To assist the consumers in these markets, the Commission is assessing and re-deploying field staff and resources to key locations where stations are terminating on February 17. We are also coordinating with our contractors, partners, and industry stakeholders to provide extra support in these areas. The Commission is also mobilizing the expanded Call Center, in conjunction with industry groups, to assist with expected increase in call volume on February 17th, and the days just before and after these analog terminations. We will do our utmost to assure that, with the cooperation of the stations in these markets, and our outreach partners, the partial transition moves with minimum disruption to viewers.

We also commend the two-thirds of stations that will remain on the air, providing analog service beyond February 17, 2009. We appreciate that many of these stations are committed to continuing to provide analog service to their viewers until the new DTV transition deadline of June 12, 2009. We also recognize that there are some stations that are planning to terminate analog service before June 12, 2009. We are evaluating whether a revised process for these stations would be warranted.⁵

In contrast to the stations remaining on the air and those that have previously terminated analog service or complied with the *Third DTV Periodic Report and Order* procedures to terminate analog service before February 17th, we have identified 123 stations of the 491 intending to terminate analog service on February 17th whose early termination poses a significant risk of substantial public harm.⁶ We developed this list of stations by first identifying the markets in which all of the stations would be terminating analog service on February 17, 2009. We also identified markets in which affiliates of all four of the major networks, ABC, CBS, Fox, and NBC, would be terminating analog service, or, in markets that do not have affiliates of all four networks, we determined if all of the major networks broadcasting in those

⁵ We intend to ask the networks, station group owners, affiliates and independent stations to examine their plans and the needs and readiness of their viewers so that they can commit to specific dates for analog termination, if appropriate. This coordination and advance planning is essential for stations wishing to transition to all digital on a market-wide basis. Advance planning is critically important so that the Commission, local governments, broadcasters, multichannel video programming distributors (MVPDs), manufacturers, retailers, outreach contractors, organizations and volunteers can coordinate and deploy effective and targeted outreach, as well as assure the availability of coupons, converter boxes, construction crews, and telephone banks. The Commission has worked successfully with all of these groups when we have known, in advance, that stations would transition on a market-wide basis, as in Wilmington, NC, Hawaii, and Chico-Redding, CA. We are considering how we can offer additional in-market outreach support for stations that commit to a date now so that we have time to adjust our deployment and contractor coordination.

⁶ We do not include on the Appendix stations that previously notified the Commission of termination of their analog service prior to February 17, 2009, in compliance with the *Third DTV Periodic Report and Order*. The conditions herein apply only to those stations that are subject to the partial waiver of the procedures in the *Third DTV Periodic Report and Order* pursuant to the Public Notice of February 5, 2009, FCC 09-6. Nevertheless we encourage these stations and others that are terminating analog service on or before February 17, 2009, to undertake the conditions established below to facilitate a smooth transition in their markets. We also encourage these stations to work with the stations that are subject to these conditions to provide a coordinated outreach and consumer assistance effort throughout their markets.

markets would be terminating their analog service on February 17th.⁷ We also considered loss of major network service in cities within the larger DMAs. We considered the presence of major networks and their affiliates critical to ensuring that viewers have access to local news and public affairs available over the air because the major network affiliates are the primary source of local broadcast news and public affairs programming. Therefore, even if independent or non-commercial stations remain on the air in these markets, we still considered these areas at risk. The stations and markets that we identified in this analysis are attached in the Appendix.⁸

Accordingly, we hereby reconsider the partial waiver granted by the *February 5th Public Notice* to those stations listed on the Appendix attached to this Public Notice. These stations are, therefore, not permitted to terminate their analog service on February 17th, unless they comply with the conditions and procedures described below. Any station that was listed in Appendix A to the *February 17, 2009 Termination List Public Notice*, DA 09-221,⁹ and is not listed in the Appendix to this PN, is expected to proceed with termination of its analog service on that date, subject to the conditions previously described in the *February 5th Public Notice*.

Stations listed in the Appendix to this Public Notice may obtain reinstatement of the waiver necessary for them to terminate analog service on February 17, 2009 by certifying to the Commission, not later than the close of business (6:00 pm EST) on Friday, February 13th, that they will individually undertake the measures specified herein as a means of ameliorating the public interest harms that the termination of their analog service would engender. We also encourage stations in the markets listed in the Appendix to cooperate and undertake the actions on a joint basis. Each station should certify in response to this Public Notice its compliance with the following eight measures.¹⁰ These certifications will reflect that the station is undertaking the action individually or that they have confirmed that another station will do so.

⁷ As reflected on the attached Appendix, independent and non-commercial stations in these markets, that were listed as terminating analog service on Appendix A to the February 10th Public Notice, may proceed with termination of their analog signals on February 17, 2009. The majority of local news, public affairs programming, and emergency information is provided by the local affiliates of the major networks, and the Commission has consistently relied upon the affiliates of the top four major networks to lead the way for the DTV transition. See, e.g., *Third DTV Periodic Report and Order*, 23 FCC Rcd 2994, 3054, n.371. Consequently, the obligations and conditions described, *infra*, apply only to the stations listed on the attached Appendix, and the independent and non-commercial stations in these DMAs are encouraged to coordinate with the network affiliates but are not required to certify their commitment as a condition of the waiver.

⁸ Stations and members of the public, particularly in the affected areas, may contact us if they identify errors in the attached list.

⁹ See *February 17, 2009 Termination List Public Notice*, *supra* note 3, at app. A.

¹⁰ Notice to the Commission must be provided electronically through the Commission's Consolidated Database System ("CDBS") using the Informal Application filing form. To access the CDBS electronic filing system in order to file a Certification/Alternate Showing: Analog termination on February 17, 2009, go to the Media Bureau's web site at: <http://www.fcc.gov/mb/cdbs.html>. Instructions as to how to file these notifications are as follows: After logging into the CDBS, select the last option from main menu "Additional non-form Filings." From the next menu select "Silent STA/Notification of Suspension." From the pre-form menu select: "Certification/Alternate Showing: Analog termination on February 17, 2009." No fee is required. For additional information, contact Hossein Hashemzadeh, Hossein.Hashemzadeh@fcc.gov, of the Media Bureau, Video Division, at (202) 418-1658. The Commission has sought and obtained OMB approval, under OMB's emergency processing provisions, 5 CFR 1320.13, for the new information collection requirements contained in this Public Notice. See OMB Control No. 3060-0386.

- Ensure that at least one station that is currently providing analog service to an area within the DMA that will no longer receive analog service after February 17, 2009 will continue broadcasting an analog signal providing, at a minimum, DTV transition and emergency information, as well as local news and public affairs programming (“enhanced nightlight” service¹¹) for at least 60 days following February 17, 2009. The local news, public affairs, or other programming may include commercial advertising.
- Ensure that on-air educational information (prior to February 17 and thereafter as part of “enhanced nightlight” service) will include demonstrations of converter box installations, antenna setups, and other helpful information.
- Ensure that enhanced nightlight service concerning the DTV transition or emergency information will be provided in Spanish and English and accessible to the disability community (e.g., silent scrolls or slates do not provide information to the visually impaired, and therefore, broadcast notices must have an aural component, as well as being closed or open captioned).
- Ensure that the DTV educational information, both on-air and through other means, will provide information describing areas that may be losing over-the-air signal coverage temporarily or permanently as the station transitions to digital-only broadcasting. Such information may include detailed maps, listings of affected communities, and instructions on how to assess what type of antenna may be necessary to retain or regain the station’s digital signal, as well as identifying specific locations that will not be able to receive a digital signal regardless of antenna.
- Each station individually or collectively in the market commits to assisting viewers by providing local or toll-free telephone assistance, including engineering support. Such assistance may be provided jointly with other stations, organizations, and businesses in the area.
- Each station alone or together with other stations or local businesses and organizations in the market will provide a location and staff for a consumer “walk-in” center to assist consumers with applying for coupons and obtaining converter boxes, to demonstrate how to install converter boxes, to provide maps and lists of communities that may be affected by coverage issues, and to serve as a redistribution point for consumers who are willing to donate coupons, converter boxes, televisions and for those in need of these items.

¹¹ The “enhanced nightlight” service contemplated here is not the same as the material specified in the Analog Nightlight program (which will apply to continued analog TV service for a period of up to 30 days after the DTV transition date). See *Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program*, MB Docket No. 08-255, Report and Order, FCC 09-2 (rel. Jan. 15, 2009) (“*Analog Nightlight Order*”). Rather, because this is part of the pre-transition time period, the enhanced nightlight service will include other programming--at a minimum, local news and public affairs--in addition to DTV transition and emergency information.

- Each station, individually, is complying with the obligation established in the *February 5th Public Notice* to broadcast a crawl on their analog channel regarding the station's termination of analog service, for the seven day period from February 10 through the termination of the station's analog signal on February 17. 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. 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. Each station will include in the crawl the FCC toll-free number for our Call Center (1-888-CALLFCC, 1-888-225-5322) beginning as soon as possible following the release of this Public Notice.
- Each station will consider and is encouraged to coordinate with and use community resources to provide consumer outreach and support, including in-home assistance.

Stations listed in the Appendix that do not certify that they will undertake the actions described above may make an alternative showing to the Commission that extraordinary, exigent circumstances, such as the unavoidable loss of their analog site or extreme economic hardship, require that they terminate their analog service on February 17th. The showing should not exceed five (5) pages, not including attachments.¹² We do not anticipate that many stations will be able to meet the high burden applicable to this showing. Any station electing to make this showing must await a determination by the Commission that its showing is sufficient before terminating analog service. The Commission will endeavor to resolve all of these cases prior to February 17th.

Stations certifying to the above conditions are permitted to cease analog operations on February 17, 2009 without further authorization from the Commission.¹³ Pursuant to this Public Notice, we restore the waiver to be effective at the time the station certifies compliance with the public interest conditions.

The FCC reserves the right to take appropriate action against stations that certify they will meet the conditions, fail to do so and nevertheless go off the air on February 17, 2009.

¹² These explanatory filings may also be made using the procedure and form described in footnote 10, above.

¹³ Stations will have three options on the form and must select one:

i) I certify that the above-referenced station IS in compliance with the public interest conditions for analog turn off set forth in Public Notice, FCC 09-7, released February 11, 2009.

ii) The above-referenced station IS NOT in compliance with the conditions set forth in Public Notice, FCC 09-7, released February 11, 2009, and the alternative showing of extraordinary, exigent circumstances, such as the unavoidable loss of analog site, is submitted in an attached exhibit.

iii) The above-referenced station DOES NOT certify to the conditions for analog turn off set forth in the Public Notice, FCC 09-7, released February 11, 2009, and will continue analog service until given FCC authorization (by rule or order) to turn off that service.

For additional information, contact Barbara Kreisman, Barbara.Kreisman@fcc.gov, of the Media Bureau, Video Division, at (202) 418-1600.

Action taken by the Commission on February 11, 2009: Acting Chairman Michael J. Copps and Commissioners Jonathan S. Adelstein and Robert M. McDowell.

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