

February 27, 2009

Kevin Neyland  
Deputy Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Neyland:

By this letter, the Federal Communications Commission (FCC) requests approval under the Paperwork Reduction Act of 1995, and in accordance with OMB's emergency processing rules (5 CFR 1320.13), to modify the following three existing DTV transition-related information collection requirements, as described in detail below: (1) OMB Control No. 3060-0386 (informal notifications to FCC); (2) OMB Control No. 3060-1117 (viewer notifications); (3) OMB Control No. 3060-1115 (consumer education requirements). Because these requirements must take effect on or before March 13, 2009 – the statutory deadline for implementing the DTV Delay Act, we request expedited OMB approval by March 11, 2009.

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,<sup>1</sup> except for limited analog “nightlight” service.<sup>2</sup> 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.<sup>3</sup> Congress extended the transition date in order to permit analog service to continue until consumers have had additional time to prepare.<sup>4</sup> But Congress also directed the Commission to provide flexibility for stations wanting to transition prior to the new date.<sup>5</sup> Stations may have made extensive

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<sup>1</sup> 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.”).

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

<sup>3</sup> 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.

<sup>4</sup> See, e.g., Cong. Rec. H895 (daily ed. February 4, 2009).

<sup>5</sup> 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

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.

On February 20, 2009, the Commission adopted and released a Second Report and Order and Notice of Proposed Rulemaking (FCC 09-11) in MB Docket No. 09-17 to implement the DTV Delay Act.<sup>6</sup> The Commission's requirements and proposals are influenced by its experience planning for the partial transition by one-third of the full power stations on or just before February 17, 2009 (the previous nationwide transition date). The Commission has found that advance planning and station commitment to highlight service and public interest outreach contribute to a smoother transition.

Second Report and Order. In the Second R&O, the Commission requires all full-power television broadcast stations (that are still broadcasting an analog signal) to file a binding notice to the Commission of their proposed analog television service termination date ("Analog Termination Notification"). See OMB Control No. 3060-0386.

Notice of Proposed Rulemaking. In the NPRM, the Commission, first, tentatively concludes that stations affiliated with a major network (*i.e.*, ABC, CBS, FOX, and NBC) wanting to terminate analog television service early, *i.e.*, before the June 12 transition deadline, must file a certification with the Commission that they will comply with several public interest conditions, or make a showing of "extraordinary, exigent circumstances" ("Certification" or "Showing"). See OMB Control No. 3060-0386. Any major network affiliate station that does not certify compliance to the public interest conditions or otherwise make the required showing must continue providing full analog television service until June 12, 2009 (except in the case of equipment failure, natural disaster, or other unforeseeable emergency).

Second, the public interest conditions imposed on major network affiliate stations to permit them to terminate analog service early include an "On-Air 7-Day Crawl" viewer notification requirement prior to the station's planned termination. That is, in the final seven days leading up to the station's early termination of its analog television service, the station must broadcast a "7-day crawl" informing its viewers about its imminent cessation of analog TV service. See OMB Control No. 3060-1117. The crawl would be aired concurrent with, and not in place of, the station's regular programming.

Third, the Commission proposes to require all full-power television broadcast stations, as part of their existing consumer education requirements, to provide specific notice to analog viewers who are likely to lose over-the-air service from the station due to changes in the station's coverage area ("Service Loss Consumer Education Requirement"). See OMB Control No. 3060-1115. The Commission's experience with stations that have already terminated analog service, particularly in those areas where an entire market has transitioned, is that loss of a station due to a change in the

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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)".

<sup>6</sup> Implementation of the DTV Delay Act, MB Docket No. 09-17, Second Report and Order and Notice of Proposed Rulemaking, FCC 09-11 (rel. Feb. 20, 2009) ("Second R&O" and "NPRM").

digital coverage area creates the greatest consumer confusion and distress. Therefore, the Commission proposes to require stations to provide specific notice to analog viewers who are likely to lose over-the-air service from the station due to changes in the geographic coverage area or population served by the station during or after the transition. This is already required for ‘Option One’ stations, and would now apply to stations that elected Options Two or Three. The information would be provided to stations’ viewers via the already required consumer education initiative PSAs.

#### **MODIFIED INFORMATION COLLECTION REQUIREMENTS:**

1. **Analog TV Service Termination Notifications.** All full-power television broadcast stations (that are still broadcasting an analog signal) must file a binding notice to the Commission of their proposed analog television service termination date no later than March 17, 2009 (11:59 p.m. EST).<sup>7</sup> In this notification, stations must either commit to terminating on the June 12, 2009 nationwide transition deadline or on a date prior to transition deadline (but not earlier than April 16). Any station that does not notify the Commission by March 17, 2009, will be determined to be terminating on June 12, 2009, and will not be permitted to terminate their analog service prior to June 12, 2009 (except in the case of equipment failure, natural disaster, or other unforeseeable emergency). Stations must file these notifications through the FCC’s Consolidated Database System (“CDBS”) using the Informal Application Filing Form. See OMB Control No. 3060-0386.
2. **Early Termination Certifications and Showings.** For stations affiliated with a major network (*i.e.*, ABC, CBS, FOX, and NBC) wanting to terminate analog television service early, *i.e.*, before the June 12 transition deadline, the Commission will require stations to (1) certify to the Commission that they will comply with several public interest conditions,<sup>8</sup> or, alternatively, make a showing of “extraordinary, exigent circumstances”. support and supplement their initial February 17 Termination Notifications by February 13 by either (1) certifying compliance with several public interest conditions; or (2) show that “extraordinary, exigent circumstances,” such as the unavoidable loss of their analog site or extreme economic hardship, require that they terminate their analog service early. Stations’ certifications or showings will be filed in their analog TV service termination notifications via CDBS. See OMB Control No. 3060-0386.
3. **On-Air 7-Day Crawl Viewer Notification Requirement.** As one of the public interest conditions imposed on major network affiliate stations to permit them to terminate analog service early, each station, individually, must broadcast a crawl on their analog channel regarding the station’s imminent termination of analog service, for the seven day period just prior to the date of early termination. 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 (1-888-CALLFCC, 1-888-225-5322). Stations that cannot broadcast a crawl because it is technically unfeasible may provide substitute information on an hourly

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<sup>7</sup> The short deadline for notification to the Commission is necessary to enable the Commission to evaluate and adjust deployment of its resources, and to coordinate with other entities in order to prepare for analog service terminations on that date and protect the public interest. The Commission must make and adjust arrangements for consumer outreach, call center staffing, converter installation assistance and coordinate with contractors, partners, volunteers, and organizations throughout the country to address areas where many or most stations will terminate their analog signals early.

<sup>8</sup> For the list of public interest conditions, see FCC 09-11 and subsequent orders in docket 09-17.

basis, which should be indicated in their certification. See OMB Control No. 3060-1117.

4. **Service Loss Consumer Education Requirement.** As part of their existing and ongoing consumer education requirements through the end of the nationwide transition deadline and for a limited period after the deadline, all full-power television broadcast stations must provide specific notice to analog viewers who are likely to lose over-the-air service from the station due to changes in the geographic coverage area or population served by the station during or after the transition. The information would be provided to stations' viewers via the PSAs aired to satisfy the existing consumer education initiative requirements. This is already required for 'Option One' stations, and would now apply to stations that elected Options Two or Three. Stations would also be required to provide the following additional information: (1) geographically specific information detailing areas that are covered by the Grade B analog contour but are not predicted to receive digital service; (2) educational information describing areas where analog signal strength is generally sufficient for viewers to rely on an indoor antenna but where it is likely that they will need an outdoor antenna to receive the digital signal; (3) information to consumers about the need to periodically "rescan" when using over-the-air digital reception equipment, particularly through the end of the transition; (4) stations that are changing their broadcast frequency from VHF to UHF (or vice versa), information to consumers about the need for additional or different equipment to avoid loss of service. See OMB Control No. 3060-1115.

FCC staff is ready to work with your PRA Desk Officer to immediately provide any additional information needed to assure OMB's approval.

Sincerely,

Mindy Ginsburg  
Deputy Managing Director  
Federal Communications Commission