

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. 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.⁶ The

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”).

⁶ Implementation of the DTV Delay Act, MB Docket No. 09-17, Second Report and Order and Notice of Proposed

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

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 nighttime service and public interest outreach contribute to a smoother transition.

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.⁷ 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 nighttime service and public interest outreach contribute to a smoother transition.

Notice of Proposed Rulemaking. In the NPRM, 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. The crawl would be aired concurrent with, and not in place of, the station's regular programming.

REVISED INFORMATION COLLECTION REQUIREMENT WHICH NEEDS OMB REVIEW AND APPROVAL:

- **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, *i.e.*, before the June 12 transition deadline, 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 basis, which should be indicated in their certification.⁸

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

Congress has mandated that after June 12, 2009,⁹ 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*

Rulemaking, FCC 09-11 (rel. Feb. 20, 2009) ("Second R&O" and "NPRM").

⁷ 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").

⁸ See OMB Control No. 3060-1117.

⁹ This submission will cover any future date extensions that occur for this collection due to the DTV transition.

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

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 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 published a notice in the Federal Register seeking public comment for the information collection requirement contained in this supporting statement (74 FR 8889) on February 27, 2009. To date, no comments have been received from the public.

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 800 full-power television broadcast stations will cease analog broadcasting early, *i.e.*, before the June 12 transition deadline. These stations must comply with the existing viewer notification requirements for early analog termination as well as the new "7-day crawl" viewer notification requirement. The new "7-day crawl" must be aired in the final seven days leading up to the station's analog termination. 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. We note that the "7-day crawl" viewer notification requirement for stations terminating on February 17, 2009 has been completed and that burden is therefore removed from this collection. Therefore, the burden is calculated as follows:

Number of Annual Respondents: 800 Full-Power TV Broadcast Stations (Major Network Affiliates)

Number of Annual Responses:

800 stations x 24 notifications/day x 7 days = **134,400 required notifications**

Annual Burden Hours for Respondent:

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

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

$$.166 \text{ hours (10 minutes)} \times 24 \text{ hours} = 8 \text{ hours} \times 2 \text{ days of broadcasting} = \frac{8 \text{ hours}}{18 \text{ hours}}$$

$$800 \text{ full power television broadcast stations} \times 18 \text{ hours/station} = \mathbf{14,400 \text{ hours}}$$

We also estimate that approximately 1,000 full-power television broadcast stations will terminate analog service early and, therefore, may need to pursue the provisions for regulatory relief that would require the viewer notifications at issue. (This reduced estimate reflects that more than 600 stations have already terminated their analog service and estimates that more than 200 stations will continue broadcasting in analog up until the nationwide transition deadline. This estimate includes the estimated 800 major network stations that may terminate early, plus an additional 200 non-network stations.) The existing collection requires four (4) on-air notices per day for at least 30/60 days; however, because stations may not terminate analog service until 90 days within the new nationwide transition date, only the 30-day viewer notification requirement remains. 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 days and, once the respondent has fulfilled the 30-day requirements, the respondent satisfied its obligation under the existing collection. These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

Number of Annual Respondents:

- **1,000 Full-Power TV broadcast stations**

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

- 1,000 stations x 4 notices/day/station x 30 days = **120,000 notices (responses)**¹⁰

Annual Burden Hours for Respondents:

- **On Air Time:** We estimate that viewer notifications will require four minutes of air time per notice for the 30-day notices. Therefore, 1,000 stations x 4 notices/day/station x 0.067 hours (four minutes)/notice x 30 days = **8,040 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 30-day period. Therefore, each

¹⁰ On-air notifications to viewers must occur 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

respondent will have a total of 0.33 hours of consulting time - 1,000 stations x 0.33 hours/respondent to provide necessary information to counsel = **330 hours**.

TOTAL ANNUAL NUMBER OF RESPONDENTS: 800 + 1,000 = 1,800

TOTAL NUMBER OF ANNUAL RESPONSES: 134,400 + 120,000 = 254,400

TOTAL ANNUAL BURDEN HOURS:

14,400 + 8,040 hours + 10 hours + 330 hours = 22,780 hours

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

22,780 hours x \$48.08/hour = \$1,095,262.40

13. Annual Cost Burden:

- (a) Total annualized capital/startup costs: None.
- (b) Total annual costs (O&M): **\$360,000**. 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: 1,800 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 = \$360,000.
- (c) Total annualized cost requested: **\$360,000**.

14. There is no cost to the Federal Government.

15. There are program changes to the annual burden hours +5,400 hours and annual cost burden +\$50,000. These program changes are due to the Commission releasing a Report and Order and NPRM, FCC 09-11 which contained a revised information collection requirement which impacted this collection.

There is also an adjustment to the annual burden hours of -3,635 hours due to the fulfillment of the 60-day viewer notification requirement.

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.

OMB Control Number: 3060-1117

February 2009

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

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.