

**Remedial Measures for Failure to Construct Digital Television Stations
(DTV Policy Statement)**

SUPPORTING STATEMENT

A. Justification:

1. On April 16, 2003, the FCC released a Report and Order and Memorandum Opinion and Order on Reconsideration, *In the Matter of Remedial Steps for Failure to Comply with Digital Television Construction Schedule*, MM Docket No. 02-113, FCC 03-77, (“R&O”). The Commission adopted a series of remedial measures for stations that fail to construct their digital television (DTV) facilities in a timely fashion and fail to justify an extension of their DTV construction deadline. Stations will be subject to periodic reporting requirements.

Under the first step, the Commission will deny the request for an unqualified extension and admonish the station for its failure to comply with its DTV construction obligation. The station must submit a report within thirty days outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Sixty days after its initial report, the station must submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered

Under the second step in the approach, if the station has not come into compliance with the DTV construction rule within a six-month period, then, absent extraordinary and compelling circumstances, the Commission will issue a Notice of Apparent Liability for forfeiture to the licensee and require that the station report every thirty days on its proposed construction milestones and its efforts to meet those milestones. Once again, failure to adequately demonstrate that the station was taking all reasonable steps towards construction and to justify any additional delays that were encountered will result in the imposition of additional sanctions.

Under the third and final step in the approach, if the station still had failed to come into compliance with the DTV construction rule within an additional six-month period of time (i.e., one year from the date of the formal admonition), then, absent extraordinary and compelling circumstances, the Commission will consider its construction permit for its DTV facilities to have expired and will rescind the station's DTV authorization. The Commission concluded that no hearing was necessary prior to rescinding the station's DTV authorization. The Commission also concluded that it would not make the station's vacant DTV allotment available. The Commission also announced that the station will be required to surrender its analog authorization at the end of the DTV transition.

The Commission is requesting an extension of this information collection in order to receive the full OMB three year approval/clearance.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The statutory authority for this information collection is contained Sections 154(i), 303, 307, 309, 319 and 336 of the Communications Act of 1934, as amended.

2. The reports will be used by the FCC staff to determine, on a case-by-case basis, whether a broadcaster

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should be afforded additional time to construct its DTV facilities.

3. The above-referenced reports will be filed in letter form with the Secretary's office at the FCC.
4. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. The Commission has limited the information requirement to that which is absolutely necessary to determine if an extension is necessary.
5. This collection of information will impact small businesses or other small entities, since in general, it is the small licensees who fail to construct their digital television (DTV) facilities in a timely fashion and fail to justify an extension of their DTV construction deadline. However, the Commission has taken various measures to minimize the burden on these small entities so that the impact will be significant. For example, when designing the DTV construction timetable, stations located in smaller markets (which tend to be small entities) were given additional time to construction. Furthermore, the Commission allows entities in smaller markets to build minimal DTV facilities at a lower cost to meet their construction deadline. Finally, small entities may seek an extension to their DTV construction deadline by demonstrating their inability to construct based on lack of financial resources.
6. The frequency of this collection of information is determined by the above-outlined measures.
7. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).
8. The Commission published a Notice (74 FR 2586) in the Federal Register on January 15, 2009. No comments were generated as a result of the Notice.
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. The Commission reports the following public burden:

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Number of Respondents	Number of filings/reports filed per respondent	Total Number of 30/60-day Reports filed	Respondent's Burden Hours	Annual Burden Hours	Respondent's Hourly Salary	Total Annual In-House Cost
20	2	40 ¹	2	80 hrs.	\$48.07	\$ 3,845.60
<u>380</u>	2	<u>760</u>	0.5 ²	<u>380 hrs.</u>	\$48.07	<u>\$18,266.60</u>
400 Respondents		800 Reports		460 Hours		\$22,112.20 In-House Cost

Total Number of Annual Respondents: 400 Licensees

Total Number of Annual Responses: 800 Reports

Total Annual Burden Hours: 460 Hours

Total Annual "In-house" Cost: \$22,112.20

13. **Annual Cost Burden:** We assume that 380 (95%) of respondents will hire an "outside" attorney to complete and file the required report with the Commission. We estimate that it will take the attorney approximately 2 hours to prepare and file each 30 and 60-day progress report and that the attorney will charge approximately salary of \$200/hour.

$$380 \text{ respondents} \times 2.0 \text{ hours/report} \times 2 \text{ reports/respondent} \times \$200/\text{hour} = \$304,000$$

Total Annual Cost Burden: \$304,000

14. The Commission will use professionals at the GS-13, Step 5 level (\$45.05) to process the 30 and 60-day reports.

$$4.0 \text{ hours/report} \times \$45.05/\text{hour} \times 800 \text{ reports} = \$144,160.00$$

Total cost to the Federal Government: \$144,160.00

15. There are no program changes or adjustments to this information collection.

16. The data will not be published.

17. This information collection does not include any FCC forms; consequently, the Commission is not

¹ This number represents the total number of reports filed by the respondent without outside assistance.

² Respondent's time spent consulting with an outside attorney to provide information to the attorney to enable the attorney to complete and file the remaining 760 reports.

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seeking approval not to display the expiration date for OMB approval of the information collection.

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.