

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

May 14, 2009

Alexander Hunt
Chief, Information Policy Branch
Office of Information and Regulatory Affairs
Office of Management and Budget

Dear Mr. Hunt:

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), for new DTV transition-related information collection requirements, as described in detail below. Specifically, the new collection would result from the Commission's request for, and coordination of, a voluntary nationwide block programming "soft test" on May 21.

We request approval by Thursday, May 14, 2009. Because these voluntary third party disclosure information collection requirements will last only for the remaining month until the June 12, 2009 transition deadline, we request an expedited timeline for OMB approval. Furthermore, waiver of the public comment period is warranted both because the collection is needed immediately to be done on May 21 and also because the FCC has coordinated with industry and incorporated input from industry for this voluntary soft test request.

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 statutory 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

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

The Commission is currently reaching out to the broadcast industry to coordinate a voluntary nationwide block programming “soft test” on May 21. A “soft test” is when a station airs a slate and/or other programming for a very short period of time in lieu of regularly scheduled programming to catch the attention of viewers and inform them that if they are receiving this “soft test” programming then they may not be prepared for the DTV transition. The test should be an effective way to measure government, industry, and consumer readiness for the digital transition on June 12 and would remind consumers of the immediate need to take action. It will test the preparedness of the Commission’s and broadcasters’ call centers to handle the call traffic expected around the final transition date. Industry-sponsored “soft tests” to date have proven effective as “wake up calls” to consumers. The Commission, however, is asking broadcasters to conduct a soft test on the same day and at the same time to ensure viewers will notice the test. The Commission believes a coordinated nationwide test – even though voluntary – would maximize the impact of the test. The Commission’s request for broadcasters to voluntarily participate in the nationwide block programming “soft test” on May 21 implicates the Paperwork Reduction Act of 1995 (“PRA”) and would impose the following voluntary third party disclosure information collection requirements.

1. Broadcast of soft test “slate” and/or other programming: The soft test proposal asks participating stations to broadcast a “slate” and/or other programming three times a day, each time for a duration of 5 minutes, resulting in 15 minutes of total air time ($3 \times 5 = 15$) for this voluntary third party disclosure requirement. The soft test proposal also asks participating stations to include voice-overs for the blind in their “slate” and/or other programming.

2. Promotional and follow-up additional consumer education messaging: The soft test proposal asks participating stations to promote the soft test with messaging before the test and to follow-up the test with *additional* consumer education messaging.⁵ We estimate that participating stations would air this additional consumer education messaging for the 7 days preceding the test and for the following 21 days leading up to the nationwide transition on June 12. We estimate that participating stations would air this additional consumer education messaging for approximately 20 minutes each day for the aforementioned 28 days, resulting in 560 minutes of total air time ($20 \times 28 = 560$) for this voluntary third party disclosure requirement.

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 To the extent that broadcasters include the “soft test” messages as part of their existing consumer education messaging, this collection would be covered by OMB Control No. 3060-1115, relating to the FCC’s consumer education requirements.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mindy Ginsburg', with a stylized, flowing script.

Mindy Ginsburg
Deputy Managing Director
Federal Communications Commission