

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Parts 73 and 74 of the ) MB Docket No. 03-185  
Commission’s Rules to Establish Rules for Digital )  
Low Power Television, Television Translator, and )  
Television Booster Stations and to Amend Rules )  
for Digital Class A Television Stations )

**SECOND REPORT AND ORDER**

**Adopted: July 15, 2011**

**Released: July 15, 2011**

By the Commission: Commissioners Copps and McDowell issuing separate statements.

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## I. INTRODUCTION

1. In this Second Report and Order, we take steps to resolve the remaining issues in this proceeding in order to allow a timely and successful completion of the low power television digital transition.<sup>1</sup> Although Congress established a hard deadline of June 12, 2009 for full power stations to cease analog operations and begin operating only in digital, the statutory deadline did not apply to low power television stations.<sup>2</sup> Therefore, while all full power television stations have ceased over-the-air analog broadcasting, many low power television stations are continuing to transmit analog signals.<sup>3</sup>

2. To ensure a timely and successful completion to the low power television digital transition, we take the following steps: (1) adopt a hard deadline of **September 1, 2015** for the termination of all analog low power television facilities; (2) establish rules permitting those stations needing additional time to complete their digital transition to obtain a “last minute” extension; (3) require existing analog and digital low power television stations in the 700 MHz band (channels 52-69) to submit displacement applications by **September 1, 2011**, and to cease operations in the 700 MHz band by **December 31, 2011**; (4) increase the power limits for VHF low power television channels to 3 kilowatts (the current analog power limit); (5) delegate to the Media Bureau the authority to establish timeframes and procedures for stations that have not already converted to notify the Commission of their conversion plans; (6) widen the class of low power television broadcasters subject to the Commission’s ancillary and supplementary fee rules; (7) modify the Commission’s minor change rule so that it covers a proposed change in a low power television station’s transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station’s transmitting antenna; (8) revise the vertical antenna patterns used in the prediction methodology for the low power television services; and (9) allow low power television stations to use the emission mask used by full power television stations.

## II. BACKGROUND

3. The Commission first established a framework for the digital low power television transition in 2004. The *Digital LPTV Order* established a regulatory framework intended to hasten the transition of low power television stations to digital operations, while minimizing disruption of existing service to consumers served by analog low power television stations. The Commission granted all

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<sup>1</sup> In this item, Class A TV stations, low power television stations (referred to separately as “LPTV”), and TV translators, are referred to collectively as “low power television stations.” There are a total of 7240 licensed low power television stations: 522 Class A TV, 2191 LPTV, and 4527 TV translator stations. See “Broadcast Station Totals as of December 31, 2010,” *News Release*, February 11, 2011.

<sup>2</sup> See *DTV Delay Act*, Pub. L. No. 111-4, 123 Stat. 112 (2009) (“*DTV Delay Act*”); Digital Television and Public Safety Act of 2005 (“*DTV Act*”), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)). See also Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Report and Order*, 19 FCC Rcd 19331, 19337-19338 ¶¶ 13-18 (2004) (*Digital LPTV Order*) (interpreting the Communications Act to give the FCC discretion to establish a deadline for the transition of low power television stations “after the end” of the full-service station transition period), citing 47 U.S.C. §§ 309(j)(14)(A), 336(f)(4). *DTV Act* § 3002(a) amended Section 309(j)(14) of the Communications Act to establish February 17, 2009 as the original hard deadline for the end of analog transmissions by full power stations. 47 U.S.C. § 309(j)(14)(A). The *DTV Delay Act* extended the DTV transition date from February 17, 2009 to June 12, 2009.

<sup>3</sup> Full power television stations receive greater interference protection and operate at higher power levels than low power television stations. In addition, full power television stations may operate only on channels that appear in the Commission’s Table of Allotments (see 47 C.F.R. § 73.622(i)), whereas low power television stations may operate on any available channel that does not result in unacceptable interference to other spectrum users.

existing low power television stations the opportunity to seek either an on-channel digital conversion (“flash cut”) authorization or the opportunity to receive a “digital companion channel” to operate with their analog channel.<sup>4</sup> The Commission sought to facilitate, wherever possible, the digital transition of low power television stations, thereby enabling their viewers to realize the many benefits of digital broadcast television technology.<sup>5</sup> The rules and policies adopted therein provided flexible and affordable opportunities for the initiation of digital low power television service, through the conversion of existing analog service and, where spectrum is available, through new digital stations. In addition, in the *Digital LPTV Order*, the Commission concluded that the Communications Act compelled low power television stations ultimately to convert to digital operation, but deferred the decision as to what date to set for the low power television digital transition date to a future proceeding.<sup>6</sup>

4. Since adoption of the digital rules in 2004, the Media Bureau has granted 2980 construction permits for low power television stations to flash cut to digital.<sup>7</sup> In addition, the Media Bureau has granted 1354 construction permits for digital companion channels. Although only 60 percent of the existing 7240 stations in the low power television services have taken steps to move toward digital operation, the Commission has seen a rapid increase of the licensing of digital low power television facilities over the past year. This is likely due to the fact that the full power television digital transition has been completed which has led to additional channels (that were returned by full power television stations) being available to low power television stations for use with their digital facilities, and a greater number of viewers of low power television stations possessing digital receivers. Based upon the increased number of stations seeking digital authorizations, we believe that the low power television service as a whole is now much closer to being ready to complete the transition to digital broadcasting than it was in 2004.

5. The National Broadband Plan (“Broadband Plan”) recommended several measures to increase the efficiency of spectrum use in the broadcast TV bands with the goal of ultimately reallocating spectrum from those bands for use in the provision of mobile broadband services.<sup>8</sup> Among other things, the Broadband Plan recommended establishing “a deadline to achieve the DTV transition of low power television stations by the end of 2015 or after the reallocation of spectrum from the broadcast TV bands is complete.”<sup>9</sup> In this proceeding, we proposed deadlines and procedures to complete the low power television transition to digital broadcast technology in order to promote more efficient use of spectrum in the broadcast TV bands. We received 37 comments, 16 reply comments and 6 *ex parte* letters in response

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<sup>4</sup> *Digital LPTV Order*, 19 FCC Rcd at 19376 and 19379. The Commission provided existing LPTV, TV translator and Class A station licensees and permittees the initial opportunity to file for digital companion channels before giving non-incumbents the chance to file applications for new digital stations. *Id.* at 19383.

<sup>5</sup> *Digital LPTV Order*, 19 FCC Rcd at 19331

<sup>6</sup> *Digital LPTV Order*, 19 FCC Rcd at 19337 (“As an integral component of the nation’s television system, we believe that Congress intended LPTV, TV translator and Class A stations to transition to digital service, thereby permitting their viewers to realize the benefits of digital broadcast technology.”).

<sup>7</sup> This figure includes “digital displacement applications”, where a low power television station seeks a new operating channel as a result of being displaced by a full power television or wireless license and also seeks to convert its facilities to digital.

<sup>8</sup> See *Connecting America: The National Broadband Plan* at 94 (March 2010); available at <http://broadband.gov/plan/>.

<sup>9</sup> *Id.* at 92.

to the *Further Notice*.<sup>10</sup>

### III. SECOND REPORT AND ORDER

6. Since the initiation of the digital television conversion process, we have consistently sought to ensure an expedited and successful transition for all television services.<sup>11</sup> In order to further hasten the low power television conversion to digital, so that more of the public will be able to enjoy the benefits of digital broadcast television technology and to increase the efficient use of available spectrum, we now establish the timetable and procedures for the final low power television digital conversion and modify our technical rules to allow low power television stations to enhance their service in order to ensure a successful conversion by allowing additional operating power for VHF channels, allow acceptance of actual vertical antenna patterns, and the use of the full power television emission mask.

#### A. Completion of the Transition to Digital

##### 1. September 1, 2015 Transition Date

7. The vast majority of commenters recognize that the time is now ripe for the Commission to complete the digital television transition by setting a hard deadline for low power stations to cease analog operations and begin operating in digital.<sup>12</sup> Taking into account all of the factors outlined in the *Further Notice* as well as the wide variety of comments provided in this proceeding, we conclude that adoption of a **September 1, 2015** date for the termination of all analog low power television service will ensure a successful completion of the digital transition. The principal obstacle to establishing a hard deadline for the low power television digital transition - the need to wait for passage of the full power transition deadline in order to increase the number of viewers ready to receive a digital signal - has now been eliminated.<sup>13</sup> Completion of the full power television digital transition on June 12, 2009, created an incentive for television viewers to transition to digital service (either through a digital receiver or analog converter) in order to be able to continue viewing full power television stations over the air. In fact, a report issued by the National Telecommunications and Information Administration ("NTIA"), notes that the number of households that could not view digital television dropped significantly from 2.2 percent in

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<sup>10</sup> Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Further Notice*, 25 FCC Rcd 13833 (2010) (*Further Notice*). Appendix A contains a list of commenters in this proceeding. Comments in response to the *NPRM* were due on December 17, 2010 and reply comments were due on January 18, 2011. See "Media Bureau Announces Comment and Reply Comment Dates for the LPDTV Transition Further Notice of Proposed Rulemaking, DA 10-1996, 25 FCC Rcd 14493 (MB 2010). Because the Commission's Electronic Comment Filing System (ECFS) was unavailable after 6pm ET on December 17, 2010 due to building maintenance, the comment deadline was extended to December 20, 2010. See "Extension of Deadline Paper and Electronic Filings," *Public Notice*, released December 17, 2010.

<sup>11</sup> See, e.g., Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, *Report and Order*, 23 FCC Rcd 2994 (2007) (*Third Periodic DTV Report and Order*).

<sup>12</sup> See, e.g., Verizon Comments at 2; Airwaves Comments at 1; One Ministries Comments at 1; Island Comments at 2; Flinn Comments at 3; Renard Reply Comments at 1; Joint Commenters Reply Comments at 1-2; CTIA Comments at 7; Trinity Comments at 2; Signal Comments at 5-6; Flinn Comments at 2-4; Venture Comments at 2; Syncom Reply Comments at 6; NTA Comments at 2; H&D Comments at 2; Cordillera Comments at 2; PBS Comments at 4; NPR Comments at 2; Harris Comments at 6; Entravision Comments at 3; CERC Comments at 2-3; CEA Comments at 2; Liberty Comments at 2; Elizabeth Trinkle Comments at 3.

<sup>13</sup> See *Further Notice*, 25 FCC Rcd at 13837.

June 2009 (at the time of the full power digital transition) to 0.5 percent in October 2009.<sup>14</sup> With the full power transition now complete, and a vast majority of viewers thus able to receive digital broadcasts, we believe it is appropriate to require low power television stations to complete their transition to digital.

8. We conclude that adoption of a transition date in 2012, as proposed in the *Further Notice*, would not be appropriate given the present status of the ongoing proceedings implementing the Broadband Plan. Specifically, in November 2010 the Commission initiated the *Broadband Innovation* rulemaking proceeding to consider the reallocation of existing UHF and VHF spectrum for the provision of wireless broadband services.<sup>15</sup> To facilitate the recovery of spectrum for wireless services, the Commission sought comments on a framework to allow two or more stations to share a six-megahertz channel, as well as on the possibility of repacking the remaining channels to increase the efficiency of spectrum use.<sup>16</sup> A 2012 deadline would be more likely than a later deadline to require some low power operators to construct digital facilities twice: once to meet the 2012 conversion deadline; and then later in accordance with any reallocation scheme. Commenters point out that many low power television stations are not in the position to transition twice.<sup>17</sup> We agree that it would be preferable for these stations not to have to make the significant investment required for conversion to digital facilities, when such facilities may have to be substantially modified due to channel displacement or taken off the air altogether in connection with the implementation of a spectrum repacking scheme.<sup>18</sup> We share the concern, expressed by George Flinn, that “an accelerated push to force a digital conversion, without any overwhelming need (again, since LPTV stations are secondary services and the National Broadband Plan effort is still in its infancy), will only artificially pressure both LPTV owners and viewers (in a time of prolonged financial headwinds).”<sup>19</sup> Thus, we disagree with those commenters who believe that a 2012 hard deadline is appropriate and would provide stations with sufficient time to complete their transition.<sup>20</sup> A transition deadline more than four years into the future will allow time for low power operators to learn more about the direction of the *Broadband Innovation* proceeding. Even if the reallocation is not concluded before the conversion deadline, a 2015 deadline will permit low power operators to take specific proposals into account when finalizing their transition plans. It will also be further removed from the prolonged economic downturn that began in late 2007, and will provide more time for operators to secure the necessary funding. To this end, we note that \$30,142,922 in funds remain in the NTIA’s Low-Power Television and Translator Upgrade Program to reimburse licensees of eligible low-power television stations for equipment to upgrade their low-power television stations from analog to digital in eligible

<sup>14</sup> See *Outside the Box, The Digital TV Converter Box Coupon Program*, NTIA, U.S. Department of Commerce, at 20, (Dec. 2009) (available at [http://www.ntia.doc.gov/reports/2010/DTVReport\\_Outsidethebox.pdf](http://www.ntia.doc.gov/reports/2010/DTVReport_Outsidethebox.pdf)) (citing data from the Nielsen Company).

<sup>15</sup> Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, *Notice of Proposed Rulemaking*, 25 FCC Rcd 16498 (2010) (*Broadcast Innovation NPRM*).

<sup>16</sup> *Id.* at 16502 and 16506.

<sup>17</sup> See, e.g., Island Comments 2-3; see also Renard Comments at 2; Una Vez Mas Comments at 2; H&D Comments at 2; One Ministries Comments at 1.

<sup>18</sup> *Id.* As Signal points out, forcing low power stations to incur significant construction costs only to force them to move again or cease operations “is a risk which low power licensees should not be required to take.” Signal Comments at 3. NTA also explains that “If a licensee fears it may need to make the investment twice or more, it may be unwilling or unable to incur the additional foreseeable risks inherent in zoning, applying, contracting, and constructing, and may simply give up.” NTA Reply Comments at 4.

<sup>19</sup> Flinn Comments at 5.

<sup>20</sup> See, e.g., Cellular South Comments at 3-4; Liberty Comments at 2-3; Elizabeth Trinkle Comments at 3-5; CEA Comments at 7; Entravision Comments at 3-4; Harris Comments at 6; NPR Comments at 2.

rural communities<sup>21</sup> We encourage the NTIA to explore seeking an extension of the statutory deadline from Congress given the number of LPTV stations that will transition after the current expiration of the program on September 30, 2012. Thus, we conclude, that the overall low power television transition process would be better served by setting the transition date far enough in the future to increase the probability that low power television stations can avoid transitioning twice, once in connection with a future reallocation and again when they complete their digital transition, and at minimum to enable stations to consider proposals in the *Broadband Innovation* proceeding when they finalize their transition plans.<sup>22</sup> In addition, a 2015 deadline would be consistent with the Broadband Plan's recommendation to conclude the digital transition by the end of 2015.<sup>23</sup>

9. We also find that the record in this proceeding demonstrates that adoption of a transition date of **September 1, 2015** will provide in-core stations that, unlike out-of-core stations, have had no impetus to begin taking the steps towards transition, time to complete the digital transition. A deadline four years in the future will give these low power television stations time to determine the best location for their digital operation, prepare and file an application, obtain a grant of their construction permit, order equipment, hire an installation crew, complete installation, conduct testing, and carry out other necessary steps toward the transition.

10. Furthermore, as we stated in the *Further Notice*, we seek to bring the benefits of digital broadcast technology to low power television viewers. Conversion to digital will promote efficient use of spectrum, and potentially enable low power television stations to take advantage of the opportunity to channel share. A hard transition date will ensure that the benefits of digital technology are realized without further delay. Additionally, given that by October 2009 only 0.5 percent of the total television households remained unready to receive digital signals, it is reasonable to project that by the low power digital conversion date nearly six years later, almost all viewers that want to receive broadcast television would have taken the necessary steps to be digital-ready. Adopting a transition date of **September 1, 2015** will allow low power television stations to have better understanding of the overall spectrum landscape when determining their final transition plan while ensuring a date by which analog spectrum must be put to a more efficient digital use. We therefore reject proposals to conclude the digital transition only after a future spectrum reallocation is completed.<sup>24</sup> For the reasons stated above, regardless of status

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<sup>21</sup> The NTIA created this program to implement the Low-Power Television and Translator Upgrade Program, P. L. 109-171, Section 3009 (as amended). Operators wishing to apply for funds must file with the agency by July 2, 2012. Further information about this program can be obtained at <http://www.ntia.doc.gov/lptv/upgrade.html>.

<sup>22</sup> Venture argues that until "LPTV operators have concrete information sufficient to allow them to assess their continued viability following implementation of the National Broadband Plan, the Commission should not impose a deadline which an LPTV operator must convert to digital operations." Venture Comments at 2. Likewise, as Flinn puts it, "without a firm legal tailwind (i.e., a definitive repack plan) necessitating a firm transition deadline, it doesn't appear to make sense to force an issue." Flinn Comments at 6. See also Trinity Comments at 2; Signal Comments at 5; State of Idaho Comments at 4; LPTV Licensee Group Comments at 3; LPTV Entrepreneurs Comments at 7; Island Comments at 3.

<sup>23</sup> We recognize that the Broadband Plan recommended that the Commission conclude the digital transition by the end of 2015 "or after the reallocation of spectrum from the broadcast TV bands is complete." Broadband Plan at 92. As explained below, however, we believe a hard deadline is necessary to ensure that the benefits of digital technology are realized as soon as possible without unduly burdening low power licensees. See paras. 10 & 12, *infra*.

<sup>24</sup> Venture argues that until "LPTV operators have concrete information sufficient to allow them to assess their continued viability following implementation of the National Broadband Plan, the Commission should not impose a deadline which an LPTV operator must convert to digital operations." Venture Comments at 2. Likewise, as Flinn puts it, "without a firm legal tailwind (i.e., a definitive repack plan) necessitating a firm transition deadline, it doesn't appear to make sense to force an issue." Flinn Comments at 6. See also Trinity Comments at 2; Signal  
(continued....)

of the *Broadband Innovation* proceeding in 2015, we believe it appropriate to set **September 1, 2015** as a firm deadline by which the low power television transition to digital must be completed.

11. As for the specific date in 2015 for the transition, based upon our experience from the full power television transition, and the record in this proceeding, we conclude that setting the low power transition date to occur in the middle of summer will maximize available construction time and minimize weather-related disruptions for low power television stations, many of which are located in remote/weather-sensitive areas. As NTA observes, weather and continuity of TV broadcast service are reasons to permit stations to continue analog operations into the summer months.<sup>25</sup> Cordillera and H&D also both point to the need for stations to have the benefit of a full construction season.<sup>26</sup> PBS, Cordillera and H&D point out that many low power television stations serve remote and rural areas of the country or have high-elevation transmitter sites, some of which can be covered with snow as late as June.<sup>27</sup> Construction in these areas will require additional time. A **September 1, 2015** transition date will ensure that all low power stations have ample time to complete their facilities prior to the deadline.

12. We disagree with LPTV Licensee Group, the State of Idaho, Venture and WLFM that no hard deadline should be set.<sup>28</sup> LPTV Licensee Group argues “that marketplace forces are sufficient to achieve that result in a timely and effective manner without government compulsion.”<sup>29</sup> Venture argues that “LPTV broadcasters know the needs of their viewers best and thus are the best judge as to the timing of the LPTV Transition.”<sup>30</sup> WLFM agrees that low power television broadcasters should be afforded the flexibility to choose between analog and digital modes of operation.<sup>31</sup> LPTV Licensee Group asserts that low power stations are motivated to set their own digital transition timetable and that there “is no reason for an LPTV station to continue analog operation unless there is a public demand for the service . . . .”<sup>32</sup> The State of Idaho believes that the Commission “should impose an application deadline rather than conversion deadline.”<sup>33</sup> We previously concluded that the Communications Act compelled low power television stations ultimately to convert to digital operation.<sup>34</sup> Therefore, the statute forbids permitting low power television stations to forever avoid converting to digital. Furthermore, allowing low power stations to continue operating in analog and to substantially delay or forgo completing their conversion to digital would prevent consumers from enjoying the benefits of digital broadcast technology, including

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Comments at 5; State of Idaho Comments at 4; LPTV Licensee Group Comments at 3; LPTV Entrepreneurs Comments at 7; Island Comments at 3.

<sup>25</sup> NTA Reply Comments at 6.

<sup>26</sup> Cordillera Comments at 2; H&D Comments at 7.

<sup>27</sup> Cordillera Comments at 2; H&D Comments at 7; PBS Comments at 5.

<sup>28</sup> LPTV Licensee Group Comments at 1; State of Idaho Comments at 8; WLFM Comments at 3; Venture Reply Comments at 6.

<sup>29</sup> LPTV Licensee Group Comments at 1.

<sup>30</sup> Venture Reply Comments at 6.

<sup>31</sup> WLFM Comments at 3.

<sup>32</sup> *Id.*

<sup>33</sup> State of Idaho Comments at 8.

<sup>34</sup> *See Digital LPTV Order*, 19 FCC Rcd at 19337.

improved picture and sound quality, and additional program offerings through multicasting.<sup>35</sup> We believe that setting a hard deadline more than four years in the future balances the concerns raised by low power operators with the need to complete the digital conversion across all television services in order to use the spectrum designated for broadcast efficiently<sup>36</sup> and to bring the benefits of digital technology to all viewers.

## 2. Provision for “Last Minute” Extension

13. We adopt the following measures to assist low power stations that need additional time to complete construction of their final digital facilities. First, we extend all outstanding low power television station digital construction permits to **September 1, 2015**, and dismiss as moot all pending extension applications.<sup>37</sup> In addition, we will permit low power stations that, despite their best efforts, are unable to make a timely conversion to file extension applications (no later than **May 1, 2015**) to request one last six-month extension of their digital construction permits to **March 1, 2016**. Although we will grant “last-minute” extensions based on appropriate showings, all stations must cease operating their analog facilities on **September 1, 2015**. Finally, after **May 1, 2015**, we will no longer permit stations to file applications for extension of their digital construction permits. Instead, we will begin applying the tolling standards in Section 73.3598 of the Commission’s rules to all new and pending low power television digital construction permits. We believe that these provisions will ensure that stations have ample time to complete construction of their digital facilities leading up to the **September 1, 2015** deadline while ensuring a successful transition to digital.

14. We conclude that fairness dictates that stations with outstanding digital construction permits set to expire in the coming months or years be given until **September 1, 2015** to complete their digital facilities. Given that the transition is not set to occur until **September 1, 2015**, we do not believe that stations should be forced to transition before they are truly prepared to do so simply because their digital construction permits are set to expire. Stations with outstanding construction permits obtained them without knowing the final timetable for the completion of the digital transition. With a hard deadline now set, those stations should not be penalized for getting an early start on the transition process; rather, they should be permitted to revise their digital construction schedule to meet their own financial and market demands. Furthermore, extending the deadline for all low power television station digital construction permits will encourage stations to file applications for their digital facilities as soon as possible, rather than incentivizing licensees to file as late as possible to obtain a construction permit with a **September 1, 2015** expiration date. Moreover, setting all low power digital construction permits to expire on **September 1, 2015** will provide certainty for all stations and streamline the review process. Therefore, we extend the expiration date of all outstanding low power television digital construction

<sup>35</sup> *Digital LPTV Order*, 19 FCC Rcd at 19338; *see also* CEA Comments at 6.

<sup>36</sup> Regarding efficiencies resulting from completing the digital conversion across all television platforms, we note that because low power stations still broadcast in analog, television manufacturers must include both NTSC and ATSC tuners in their non mobile devices. *See* 47 C.F.R. § 15.117(b) (“TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service.”); *see also* Office of Engineering and Technology Laboratory Division Knowledge Database (available at <http://fjallfoss.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?id=42863&switch=P>), Publication Number 218634 (rel. Dec. 17, 2009) (confirming dual ATSC/NTSC tuner requirement).

<sup>37</sup> We note that this change in expiration date applies only to digital construction permits for existing stations’ flash-cut or digital companion channel facilities. Construction permits for new, digital-only facilities shall continue to be granted for a three-year term and permittees may seek an extension of their construction permit pursuant to the procedures set forth in Section 74.788(c) of the rules. *See* 47 C.F.R. § 74.788(c). However, after **May 1, 2015**, construction permits for new digital-only low power television facilities shall be subject to the tolling provisions in Section 73.3598 of the rules. *See* 47 C.F.R. § 73.3598.

permits to **September 1, 2015**. Going forward, all newly-granted low power television digital construction permits for digital companion channels and digital flash-cut shall have a **September 1, 2015** expiration date. We dismiss as moot all outstanding digital construction permit extension applications.

15. As we noted in the *Further Notice*, we recognize that stations that diligently pursue completion of their digital facilities nevertheless may face unexpected delays in the months leading up to the **September 1, 2015** transition date.<sup>38</sup> Some of these stations may be located in communities that rely solely on over-the-air service from stations in the low power services that need additional time to complete their digital construction.<sup>39</sup> We agree with those commenters that believe that we should provide the opportunity for a “last-minute” extension of the transition deadline to permit low power stations that need additional time to complete their digital facilities.<sup>40</sup> We agree with those commenters that cite to circumstances where such flexibility is both reasonable and warranted.<sup>41</sup> For example, Entravision and Una Vez Mas point out that stations located near the borders of Canada and Mexico may need additional time as their facilities may need to be coordinated with those countries.<sup>42</sup> Similarly, Entravision notes that the availability of equipment installation crews may be limited in the months leading up to transition date.<sup>43</sup> Given these circumstances, we will allow low power television stations that need extra time to build their digital facilities to file an FCC Form 337 extension application no later than **May 1, 2015** for one last six-month extension to **March 1, 2016**. No further extension applications will be accepted. We remind those stations seeking a “last-minute” extension that in completing the Form 337 they will be required to demonstrate that they meet the extension criteria set forth in Section 74.788(c) of the rules.<sup>44</sup> Under that rule, stations that have not completed construction of their digital facilities must show that the delay was due to circumstances that were either unforeseeable or beyond their control or due to financial hardship. Further, stations will need to demonstrate that they have taken all reasonable steps to resolve the problem expeditiously and must provide detailed information, financial or otherwise, as to why they will be unable to meet the **September 1, 2015** deadline.

16. We reiterate that the **September 1, 2015** transition date is a “hard” deadline and that all low power television stations, including those that obtain a last-minute extension, will be required to cease analog operations on **September 1, 2015**, and those with unbuilt digital facilities will have to remain silent while they complete construction.<sup>45</sup> We conclude that stations will have a stronger incentive to complete construction of their digital facilities by the **September 1, 2015** transition date if they are

<sup>38</sup> See *Further Notice*, 25 FCC Rcd at 13839.

<sup>39</sup> *Id.*

<sup>40</sup> See, e.g., Flinn Comments at 7; Una Vez Mas Comments at 2; Harris Comments at 5-6; Entravision Comments at 7-10; Inspiration Comments at 7; Syncom Reply Comments at 2.

<sup>41</sup> See, e.g., George Flinn Comments at 7; Entravision Comments at 7; Una Vez Mas Comments at 4.

<sup>42</sup> Entravision Comments at 7; Una Vez Mas Comments at 4.

<sup>43</sup> Entravision Comments at 7.

<sup>44</sup> 47 C.F.R. § 74.788(c).

<sup>45</sup> Stations should be mindful of Section 312(g) of the Communications Act, 47 U.S.C. § 312(g), which provides that: “If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated.”

required to cease analog operations after that date. Thus, we believe this requirement is necessary in order to ensure that stations take all steps necessary to complete their digital construction in a timely manner so that they can quickly resume service. In addition, given that fewer and fewer households continue to rely on analog television service,<sup>46</sup> we conclude that the slight potential for the loss of analog service that may occur on **September 1, 2015** is greatly outweighed by the need to ensure that all low power television stations complete a timely digital conversion.

### 3. Application of Tolling Standards to Low Power Television Digital Construction Permits After May 1, 2015

17. The digital extension criteria in Section 74.788 of the rules will no longer be relevant after the **May 1, 2015** deadline for “last minute” extensions of construction permits. Nevertheless, we recognize that there may be circumstances beyond a permittee’s control that warrant relief from the construction deadline. Accordingly, beginning **May 2, 2015**, stations may seek additional time to construct their new or modified digital facilities through the tolling provisions in section 73.3598 of the rules. We note that the circumstances that warrant “tolling” of a construction permit’s expiration date are much more limited than those that warrant an extension of time to construct. Tolling will be the only means by which stations may seek additional time to complete construction after **May 1, 2015**. We adopted the same approach for full power television prior to the conclusion of the full power digital transition on June 12, 2009.<sup>47</sup> In considering appropriate procedures to facilitate the final full power transition to digital, we concluded that, “once the transition to an all-digital broadcast service has occurred, it is appropriate to apply a stricter ‘tolling’ approach to construction deadlines.”<sup>48</sup> Our conclusion was based upon the fact that, once the transition deadline has passed, “stations will no longer be required to operate dual facilities and the demand for scarce resources by industry will level off.”<sup>49</sup> We believe the same to be the case for low power television services. Following the conclusion of the low power transition on **September 1, 2015**, only those stations granted last-minute extensions will need to focus their attention on digital construction and, as was the case with the full power television transition, the demand for scarce construction and installation resources will have leveled off. Therefore, it will no longer be necessary to allow stations the greater flexibility afforded by the digital extension process in seeking additional time to complete construction. Furthermore, in the *Digital LPTV Order*, we applied the digital extension rules to low power television stations because we found that stations in the low power television service may find the DTV construction process very challenging.<sup>50</sup> Since that process will be complete on **September 1, 2015**, and given our adoption of a “last-minute” extension provision, the tolling standard will afford low power permittees sufficient authority to obtain extensions due to circumstances beyond their control. Although our normal extension provisions provide greater flexibility, the public interest in bringing the low power television transition to a timely conclusion outweighs the need to accommodate permittees who are unable to secure extensions under the tolling standard. Therefore, after the **May 1, 2015** deadline for submission of “last minute” extension applications, Section 74.788 will no longer apply.

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<sup>46</sup> As previously noted, a report issued by NTIA indicates that the number of households that could not view digital television dropped to 0.5 % in October 2009. See *Outside the Box, The Digital TV Converter Box Coupon Program*, at 20, (citing data from the Nielsen Company).

<sup>47</sup> See Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 23 FCC Rcd 2994, 3035 (2007).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Digital LPTV Order*, 19 FCC Rcd at 19389.

18. We reiterate that after **May 1, 2015**, low power television stations that experience a delay in digital construction due to one of the tolling events listed in Section 73.3598(b) of the rules (*i.e.*, act of God, administrative or judicial review, pending court action related to requirements for construction or operation of the station, obtaining international coordination, or bankruptcy of station licensee) may follow the notification procedures in Section 73.3598(c) and request that their digital construction deadline be tolled.<sup>51</sup> This shall be the only provision for obtaining additional time to complete construction for digital stations in the low power television service.

#### 4. Consumer Education

19. With the low power transition date now set for **September 1, 2015**, we do not believe it is necessary now to decide on the exact form and extent of our consumer education. However, as we begin our education efforts, we will be guided by our experience from the full power DTV transition, completed on June 12, 2009, as how best to inform consumers about the forthcoming low power change to digital. In addition, we have the excellent record from commenters in this proceeding on which to base these efforts. We will consider these comments as we decide how best to ensure that consumers are prepared for the low power television digital transition and shall announce our specific consumer education initiatives as we draw closer to the actual transition date.

20. As the **September 1, 2015** transition date approaches, we will determine whether to expand and update the FCC's existing call center so that consumers can receive up-to-the-minute information on such matters as "rescanning," help setting up digital converters boxes for analog TVs, or help resolving broader reception issues.<sup>52</sup> Alternatively, we will consider what steps to take to encourage the development of third-party call centers, such as might be provided by a group of low power television licensees working jointly. PBS and LPTV Licensee Group support this plan.<sup>53</sup> We disagree with Una Vez Mas and NTA that use of call centers is not necessary and is an inefficient use of resources.<sup>54</sup> A significant number of viewers continue to rely on over-the-air broadcasting and we believe that the use of our 1-888-CALL-FCC number may be an important tool for providing information and education to this segment of the viewing public. As Elizabeth Trinkle observes, the use of local call centers for senior citizens and rural residents, as well as targeted community outreach within ethnic, non-English speaking communities, may be an effective means of consumer education.<sup>55</sup>

21. The low power transition presents unique challenges given that many LPTVs do not originate broadcasting. Because of this fact it will be extremely important to identify regional strategies and to think creatively on how best to reach the consumers who will be affected by this transition. Further, we should focus our consumer education efforts on markets where low power television is the primary broadcast television medium. Consumers located in areas that are not served by full power broadcast stations are the most likely to be negatively affected by the digital transition. Therefore, we should consider whether to implement "targeted initiatives" for select communities nationwide to increase awareness about the forthcoming low power digital transition, focusing on those markets with the largest number of low power television viewers and "at-risk" populations such as citizens of rural areas and the

<sup>51</sup> See 47 C.F.R. § 73.3598(b) and (c); *see also* Implementation of DTV Delay Act, *Third Report and Order and Order on Reconsideration*, 24 FCC Rcd 3399, 3429, n. 156 (2009).

<sup>52</sup> In the *Further Notice*, we sought comment on "whether this call center should be expanded, as it was for the full power transition, with new or retrained staff and longer hours of operation to accommodate time differences across the country?" *Further Notice*, 25 FCC Rcd at 13840.

<sup>53</sup> PBS Comments at 6; LPTV Licensee Group Comments at 9.

<sup>54</sup> Una Vez Mas Comments at 4; NTA Comments at 4.

<sup>55</sup> Elizabeth Trinkle Comments at 7.

elderly.<sup>56</sup> Such initiatives could include staff contacts with these markets to speak with consumers, representatives of local governments, schools, civic organizations, faith centers, or trade organizations. Alternatively, we will consider whether to encourage the development of third-party “walk-in DTV help centers” like those implemented by local broadcasters during the full power DTV transition.<sup>57</sup> We agree with Elizabeth Trinkle that targeted outreach procedures may help ensure that at-risk viewers most likely to be affected are not unfairly discriminated against due to analog shutoff date.<sup>58</sup>

22. Finally, we will provide guidance to consumers on how to prepare for the low power television transition through the Commission’s web site ([www.fcc.gov](http://www.fcc.gov)) and the DTV transition web site ([www.dtv.gov](http://www.dtv.gov)). In particular, these web sites will include on-line maps of the type that we provided for the full power television digital transition, to let consumers know which low power television signals will be affected by the transition. In addition, CEA and CERC have offered to work with the FCC staff on any specific consumer education undertakings that may be helpful.<sup>59</sup> As was the case during the full power digital transition, we will rely on these groups, as well as other industry groups to provide marketplace information for consumers. For example, CERC continues to maintain an informal online survey that shows that DTV converters, of the sort used successfully in the full power digital transition, are readily available for purchase from every CERC member as well as from a large number of commercial and private sellers.<sup>60</sup> Such information will be an invaluable tool in helping to educate consumers about the digital transition.

## **B. Out-of-Core Transition Date**

### **1. December 31, 2011 Out-of-Core Transition Deadline**

23. To facilitate the clearing of the 700 MHz band (television channels 52-69) of low power television broadcasters, we adopt the proposal in the *Further Notice* to establish **December 31, 2011**, as the date by which all low power television stations must cease all operations (both analog and digital) on channels 52-69. Unlike in-core low power operators, who have not faced Commission pressure to modify their facilities, low power licensees operating on 700 MHz band channels have known for years that they would have to clear the band. Fourteen years ago, the *DTV Sixth Report and Order* identified the core DTV spectrum as consisting of those TV channels below Channel 52 and noted plans to recover channels above 52 for other uses.<sup>61</sup> Shortly thereafter, we notified low power licensees operating on channels 60-69 that they would have to terminate operation on these channels because they were being reallocated for use by commercial wireless and public safety entities.<sup>62</sup> Likewise, in 2002 we notified low power operators of the intention to recover channels 52-59.<sup>63</sup> We further emphasized our goal of clearing low

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<sup>56</sup> See “Acting FCC Chairman Copps to Visit Los Angeles in the Homestretch of the Digital Transition,” *News Release*, June 8, 2009; see also “Commissioner Adelstein to Visit Albuquerque for DTV Outreach,” *News Release*, April 20, 2009.

<sup>57</sup> See “Commission Provides Guidance to Broadcasters on Obligation to Publicize Walk-in DTV Help Centers,” *Public Notice*, DA 09-807 (released April 10, 2009).

<sup>58</sup> Elizabeth Trinkle Comments at 7.

<sup>59</sup> CEA Comments at 7; CERC Comments at 2.

<sup>60</sup> CERC Comments at 3.

<sup>61</sup> *DTV Sixth Report and Order*, 12 FCC Rcd at 14608-09 (1997).

<sup>62</sup> See Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Report and Order*, 12 FCC Rcd 22953 (1997).

<sup>63</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

power operators from the 700MHz band in the *2004 Digital LPTV Order*, when we precluded the use of out-of-core channels as digital companion channels except in very limited circumstances.<sup>64</sup> In that Order, we noted that we would require low power stations to convert to digital after completion of the full power conversion in part so that out-of-core low power stations could locate in-core channels among the spectrum surrendered by full service stations.<sup>65</sup>

24. In January 2010, after the June 12, 2009 full power digital conversion date, the Video Division began sending letters to licensees of out-of-core channel stations advising them of the need to move to an in-core channel.<sup>66</sup> Then, in September 2010, we released our *Further Notice* in this proceeding proposing an out-of-core transition date of December 31, 2011, for which applications would be due by an even earlier date - June 30, 2011.<sup>67</sup> Thus, for many years out-of-core channel low power television broadcasters have known that their use of the 700 MHz band was authorized only on an interim basis, that their out-of-core facilities would ultimately be displaced by new wireless licensees, and that shortly after the completion of the full power digital conversion they would be forced to vacate these channels and find a permanent in-core channel.<sup>68</sup>

25. In addition to abundant notice, out-of-core operators wanting and able to move to an in-core channel have had sufficient time to begin the process. They have had nearly two years since completion of the full power digital transition to find an in-core channel among spectrum surrendered by full power stations, at least a year since receiving a letter from the FCC warning of the need to move to an in-core channel, and at least nine months from the release of the *Further Notice* indicating the need to move imminently. In fact, a large majority of low power out-of-core stations have already taken action to transition to an in-core channel. We note that in 2004 there were over 1,300 low power stations operating facilities on out-of-core channels, while today that number has decreased to just over 600. Of those, over 300 have already filed displacement applications for an in-core channel. Indeed, as expected, the return of analog spectrum at the conclusion of the full power transition increased the availability of in-core channels for out-of-core low power stations, making it easier for displaced stations to find an in-core alternative. Given the ample warning provided out-of-core operators, we suspect that many of the remaining stations have not filed for an in-core channel because no available channels exist. In addition, some of these stations may have decided to forego converting to in-core digital facilities because they

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<sup>64</sup> Specifically, we noted that an incumbent may use channels 52-59 as digital companion channels only where it can certify the unavailability of any suitable in-core channel. Further, we prohibited the use of channels 60-69 for a digital companion channel. *Id.* at 19354-57. We also emphasized the secondary status of out-of-core low power station to wireless providers by adopting provisions requiring these operators to cease operations immediately upon notice of actual interference to wireless licensees, and within 120 days notice from a wireless licensee with which the low power operator is predicted to cause interference. *Digital LPTV Order*, 19 FCC Rcd at 19354-60; 47 C.F.R. § 74.703(f)(g).

<sup>65</sup> *Id.* at 19338.

<sup>66</sup> The letter warned stations that “the Commission will be taking steps this year to begin the process of clearing low power television (LPTV) and TV translator stations off of the 700 MHz band (television channels 52-69).” The letter continued that this “is an effort by the Commission to facilitate the deployment of new commercial wireless and public safety facilities on these channels. Although no deadline has been set for low power television stations to discontinue the use of 700 MHz channels, we urge you to begin the process of identifying an in-core channel (channels 2-51 excluding channel 37) and filing a displacement application as soon as possible. We appreciate your efforts to help clear the way for new uses on the 700 MHz band including the deployment of additional wireless broadband facilities.”

<sup>67</sup> *Further Notice*, 25 FCC Rcd at 13841.

<sup>68</sup> *Digital LPTV Order*, 19 FCC Rcd at 19354-60. See also CEA Comments at 10; AT&T Comments at 5; Elizabeth Trinkle Comments at 9.

have determined that the cost to do so outweighs the financial benefits of operating a digital low power station. For example, this may be the case for a TV translator which provides a service being duplicated by another facility. Low power stations therefore have known that use of the 700 MHz band was only on a temporary basis and should have been expecting to be displaced at any time.<sup>69</sup> Moreover, we agree with AT&T that “low power television broadcasters should already be prepared to comply with the **December 31, 2011** out-of-core deadline” because they already are subject to displacement by 700 MHz licensees at any time through procedures established in the *2004 LPTV Order*.<sup>70</sup>

26. Furthermore, the record in this proceeding indicates that continued use of 700 MHz channels by low power television stations beyond the end of this year will interfere with the prompt initiation of new wireless service on these channels by commercial wireless and public safety entities.<sup>71</sup> AT&T comments that “one of Congress’ primary goals in requiring broadcasters to convert from analog to digital services and clear the 700 MHz band was to make spectrum available for advanced wireless broadband services.”<sup>72</sup> Motorola believes that clearing the 700 MHz spectrum “will promote interference free operations in the band and provide certainty to commercial and public safety network operators that have made considerable investments” in the spectrum.<sup>73</sup> Commenters cite examples of how continued use of these channels by low power television stations will hamper the deployment of new services in the 700 MHz band.<sup>74</sup> Motorola maintains that “it has now been several years since the FCC permitted temporary operation (by low power television stations) and wireless carriers have made significant progress in building out 700 MHz bands. Thus, the need for the spectrum to be cleared is increasingly important.”<sup>75</sup> AT&T concurs with this assessment noting a dramatic increase in network usage since 2004 when the Commission permitted low power television stations to continue using the 700 MHz band on a temporary basis.<sup>76</sup> As examples of new commercial wireless and public safety being rapidly deployed in the 700 MHz band, CTIA notes that Verizon recently debuted its 4G LTE network in 38 markets in its 700 MHz spectrum, AT&T has planned a mid-2011 LTE launch that will cover 70 to 75 million people, several other carriers have also announced plans to soon deploy in the 700 MHz bands, and the Commission has authorized public safety entities to launch statewide or local public safety broadband networks in the 700 MHz public safety broadband spectrum.<sup>77</sup> CTIA argues that “all of these deployments will reap considerable public benefits that could be adversely affected by the continued operation of LPTV stations within channels 52 to 69.”<sup>78</sup> AT&T concludes that, “given the ever increasing demand for mobile

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<sup>69</sup> The *Further Notice* actually proposed an earlier deadline (June 30, 2011) for the filing of displacement applications; however, as outlined below, we are adopting a later deadline of **September 1, 2011**.

<sup>70</sup> AT&T Reply Comments at 3.

<sup>71</sup> See Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Report and Order*, 12 FCC Rcd 22953 (1997)(*60-69 Reallocation Order*) and Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002) (*52-59 Reallocation Order*) (subsequent histories omitted). See also CEA Comments at 10; AT&T Comments at 2-4; NPSTC Comments at 3; Verizon Comments at 2; CTIA Comments at 9; Elizabeth Trinkle Comments at 9.

<sup>72</sup> AT&T Comments at 3.

<sup>73</sup> Motorola Comments at 3.

<sup>74</sup> See, e.g., Motorola Comments at 10; AT&T Comments at 3-4; CTIA Comments at 9.

<sup>75</sup> Motorola Comments at 10.

<sup>76</sup> AT&T Comments at 3-4.

<sup>77</sup> CTIA Comments at 9.

<sup>78</sup> CTIA Comments at 9.

broadband services, it is crucial that carriers like AT&T be able to fully utilize those spectrum assets that they already have.”<sup>79</sup>

27. We agree with Motorola that for the 700 MHz band we must set an “aggressive but achievable hard date . . . because consumer demand for wireless broadband is rapidly outpacing the supply of additional spectrum.”<sup>80</sup> Furthermore, as Motorola notes, clearing low power television facilities from the 700 MHz band will “remove the burden for public safety licensees and commercial carriers to coordinate their activities with secondary users.”<sup>81</sup> NPSTC also points out that “from a public safety perspective, whether a secondary LPTV or translator station is digital or analog is irrelevant; if it interferes with an existing public safety primary operation or stands in the way of deploying such primary operations in the 700 MHz band, expeditious steps must be taken to remove the conflict.”<sup>82</sup> In addition, Verizon maintains that the immediate clearing of low power television facilities from the 700 MHz will also “avoid impeding the ongoing deployment of 4G LTE in the 700 MHz.”<sup>83</sup> Verizon indicates that it has been its experience that existing “notification and coordination process distracts personnel from their primary goal of deploying 4G LTE,” Verizon’s new wireless service being deployed on the lower 700 MHz channels.<sup>84</sup> We concur with these commenters that, in order to facilitate the prompt deployment of new commercial wireless and public safety facilities on the 700 MHz band, it is crucial that we clear this band of low power television operations by **December 31, 2011**.

28. Although we agree with Verizon that the out-of-core digital transition deadline should be prior to the in-core transition deadline, we reject its proposal to set the out-of-core transition date in September 2011.<sup>85</sup> Verizon asserts that “incumbent LPTV licensees have already had ample notice that they would need to reallocate,” and that “an earlier deadline is also fully warranted to avoid impeding the ongoing deployment of 4G LTE in the 700 MHz spectrum.”<sup>86</sup> We decline to adopt Verizon’s proposed deadline as it will not provide the approximately 300 remaining low power television out-of-core licensees sufficient time from the conclusion of this proceeding to prepare and submit their displacement applications and for the staff to complete processing of those applications.

29. We reject the alternative proposals of NTA, LPTV Licensee Group, Venture, Harris, Joint Commenters, and PBS that we either adopt a later out-of-core transition date or not adopt any deadline for out-of-core stations to transition.<sup>87</sup> These commenters maintain that the current notice mechanism for low power stations to cease operations should they interfere with a 700 MHz commercial wireless or public safety operator is working, and therefore the **December 31, 2011** out-of-core transition

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<sup>79</sup> AT&T Comments at 4.

<sup>80</sup> Motorola Comments at 5.

<sup>81</sup> Motorola Comments at 3; *See also* Verizon Comments at 3.

<sup>82</sup> NPSTC Comments at 4.

<sup>83</sup> Verizon Comments at 3.

<sup>84</sup> Verizon Comments at 4.

<sup>85</sup> *See* Verizon Comments at 2.

<sup>86</sup> *Id.*

<sup>87</sup> *See* NTA Comments at 3-4 (no deadline); LPTV Licensee Group Comments at 7 (no deadline); Venture Comments at 5 (same deadline for in-core and out-of-core channels); Harris Reply Comments at 1 (deadline of December 31, 2012 or six months after displacement application is approved); Joint Commenters Reply Comments at 2 (same deadline for in-core and out-of-core channels); PBS Comments at 6-7 (deadline of December 31, 2010 or six month after a displacement application is approved).

date is not necessary.<sup>88</sup> We continue to believe that the procedures adopted in the *Digital LPTV Order*<sup>89</sup> to ensure that low power television facilities could be quickly cleared on an ad hoc basis when new 700 MHz licensees were ready to begin operations was the correct approach at the time. However, the balance of interests has now changed since the release of the *Digital LPTV Order*, and, as we outlined above, we believe that the rapid deployment of new commercial wireless and public safety facilities in the 700 MHz band now must take priority and will be best facilitated by clearing all remaining low power television stations from the 700 MHz band by **December 31, 2011**.

30. We also decline to adopt LPTV Licensee Group's proposal that, rather than enforce a transition date such as **December 31, 2011**, the Commission should only "set a firm deadline for all LPTV stations on Channels 52-69 to apply for an in-core channel or else lose the priority now afforded to displacement applications."<sup>90</sup> LPTV Licensee Group submits that "If the new occupants are not ready, however, then to force the LPTV station out is to leave spectrum fallow and again wasted."<sup>91</sup> We disagree that clearing the 700 MHz spectrum of low power television stations this year will result in fallow spectrum as wireless operators "have made significant progress in deploying their networks" and the 700 MHz spectrum is already the "home to hundreds of public safety narrowband systems."<sup>92</sup>

31. We decline to adopt both Joint Commenters and Venture's proposal that the out-of-core transition deadline should be the same as the in-core transition deadline.<sup>93</sup> In support of its proposal, Joint Commenters states that "requiring out-of-core channels to transition to an in-core channel prior to the ultimate low power / translator digital transition deadline could result in stations having to transition three times," which would be "a significant financial burden" on low power television licensees.<sup>94</sup> We appreciate Joint Commenters concern; however, low power television stations operating in the 700 MHz band have been on notice since the release of the *Digital LPTV Order* in 2004 that they are secondary to commercial wireless and public safety operators.<sup>95</sup> Thus, unlike low power television stations with in-core channels that may never face displacement, low power television stations with out-of-core channels have known that they would ultimately be displaced and should have been prepared to make such adjustments. Additionally, the balance of interests favoring the return of analog spectrum weighs more heavily against continued use of out-of-core channels than continued use of in-core channels by low power operators, in light of the public interest in clearing the out-of-core spectrum as soon as possible to facilitate the rollout of new wireless services.

32. Finally, we decline to adopt both Harris and PBS' proposal that the out-of-core transition deadline should be set for the later of December 31, 2012 or six months after the Commission grants the out-of-core station's displacement application.<sup>96</sup> PBS submits that construction cycles constrained by

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<sup>88</sup> See NTA Comments at 3; LPTV Licensee Group Comments at 7; Venture Comments at 5; PBS Comments at 7.

<sup>89</sup> *Digital LPTV Order*, 19 FCC Rcd at 19354-60.

<sup>90</sup> LPTV Licensee Group Comments at 7.

<sup>91</sup> *Id.* See also Venture Comments at 5 (Venture also states that "If the LPTV station is not causing another authorized operator impermissible interference, there is no reason to set an arbitrary deadline for that station to cease operations.")

<sup>92</sup> AT&T Reply Comments at 3.

<sup>93</sup> See Joint Commenters Comments at 2; Venture Comments at 5.

<sup>94</sup> Joint Commenters Comments at 2.

<sup>95</sup> *Digital LPTV Order*, 19 FCC Rcd at 19354-60.

<sup>96</sup> See Harris Comments at 1; National LPTV Organizations Comments at 6.

budget cycles, seasons of the year, and operational capacity make it difficult for out-of-core low power television licensees to meet the **December 31, 2011** out-of-core deadline. We believe that the out-of-core **December 31, 2011** deadline is appropriate because low power television out-of-core licensees will have sufficient time before the onset of adverse weather conditions to complete construction of their new facilities. As for concerns with budget and the operational capacity of construction teams, low power television licensees operating in the 700 MHz band have been on notice of these issues, and unlike low power stations operating on in-core channels, should be prepared to vacate their existing channels as soon as possible. The National LPTV Organizations also state that “the notion of a firm date to exit the out-of-core spectrum without assurance that action will be taken on displacement applications by that date is problematic.” We understand National LPTV Organizations’ concern as to whether displacement applications will be processed in a timely manner. Therefore, to assure timely processing, the Media Bureau will prioritize these displacement applications to ensure that they are timely acted upon. In addition, stations may obtain an emergency STA to begin operating on their proposed in-core channel while they await processing of their displacement application.

## 2. September 1, 2011 Out-of-Core Displacement Application Deadline

33. In order to complete the final clearing of the 700 MHz band of low power television stations in an orderly fashion, we adopt a deadline of **September 1, 2011** for each out-of-core channel low power television station to file a displacement application proposing an in-core (channels 2-51 excluding channel 37) digital channel. Although the *Further Notice* proposed June 30, 2011 as the deadline,<sup>97</sup> and a number of commenters support that deadline,<sup>98</sup> we are extending the proposed deadline to ensure that the Commission has adequate time to comply with the review procedures of the Paperwork Reduction Act of 1995<sup>99</sup> and to make the necessary preparations to accept the remaining low power television out-of-core displacement applications. We believe that **September 1, 2011** provides time for those remaining low power television stations to identify a feasible in-core channel for permanent use, and to prepare and file a displacement application, considering the prior notice they have received. Stations are encouraged to file their displacement applications as soon as possible and not to wait until the **September 1, 2011** deadline.<sup>100</sup>

34. Those remaining low power television stations that are unable to identify a workable in-core channel and submit a digital displacement application by **September 1, 2011** will be required to cease operations altogether by **December 31, 2011**. These stations’ out-of-core authorization shall be cancelled. Any displacement application submitted by an out-of-core channel station after **September 1, 2011** will be dismissed.<sup>101</sup> In addition, any outstanding construction permit (analog or digital) for an out-

<sup>97</sup> *Further Notice*, 25 FCC Red at 13841.

<sup>98</sup> See, e.g., Verizon Comments at 2; Cellular South Comments at 6; AT&T Comments at 5; CTIA Comments at 10-11; Elizabeth Trinkle Comments at 10.

<sup>99</sup> Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. §§ 3501-3520.

<sup>100</sup> We note that CTIA has filed a petition seeking, *inter alia*, a freeze on the filing of applications for new or modified low power and full power stations on channel 51. See “Petition for Rulemaking and Request for Licensing Freezes,” filed by CTIA – the Wireless Association and Rural Cellular Association, March 15, 2011. That petition is currently pending before the Commission and will be considered in a future proceeding. See “Media Bureau Seeks Comment on Petition for Rulemaking and Request for Licensing Freezes,” Public Notice, RM 11626, DA 11-562, released March 28, 2011. Applicants filing displacement applications should take this into account when seeking an in-core channel to specify in their displacement application.

<sup>101</sup> While applicants unable to meet the September 1, 2011 deadline for submission of an in-core channel digital displacement application may, of course, seek a waiver pursuant to Section 1.3 of the rules, see 47 C.F.R. 1.3,

(continued....)

of-core channel will be rescinded on **December 31, 2011**, and any pending application (analog or digital) for an out-of-core channel will be dismissed on **December 31, 2011** if the permittee has not submitted a digital displacement application by the **September 1, 2011** deadline. In the *Further Notice*, we sought comment on how to address “hardship cases for those stations that, despite their best efforts, are unable to identify an in-core channel and submit the required displacement application by **September 1, 2011**.”<sup>102</sup> Given the ample notice and opportunity that out-of-core channel stations have had to find an in-core channel and submit a displacement application, we shall not extend the **September 1, 2011** application submission deadline. We further note that displacement applications filed on or before the **September 1, 2011** deadline will receive expedited processing and will be granted as soon as possible in order that stations can complete construction of their in-core facilities prior to the **December 31, 2011** out-of-core transition date. Displacement digital construction permits for in-core channels shall receive a **September 1, 2015** expiration date similar to all other digital low power television construction permits granted after the effective date of this order. However, we emphasize that no stations operating on an out-of-core channel shall be permitted to continue operating their out-of-core facilities beyond the **December 31, 2011** transition date even if construction of their in-core digital facilities is not yet complete. So long as they filed a displacement application for an in-core channel by the **September 1, 2011** filing deadline, such stations will retain the construction permit for their in-core channel, but will be required to remain silent after **December 31, 2011** while construction of their digital in-core facilities continues.<sup>103</sup>

### 3. Notification and Termination Provisions

35. To further facilitate clearance of the 700 MHz band, we adopt our proposal to extend the notification and termination provisions for digital LPTV and TV translator facilities in the 700 MHz band contained in Section 74.703(g) of the rules<sup>104</sup> to analog low power television facilities in the 700 MHz

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applicants will be expected to comply with the December 31, 2011 deadline for all LPTV stations to cease operations in the 700 MHz bands.

<sup>102</sup> *Further Notice*, 24 FCC Rcd at 13841.

<sup>103</sup> Stations should be mindful of Section 312(g) of the Communications Act, 47 U.S.C. § 312(g), which provides that: “If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated.”

<sup>104</sup> Section 74.703(g) provides that:

An existing or future wireless licensee in the 700 MHz bands may notify (certified mail, return receipt requested), a digital low power TV or TV translator operating on the same channel or first adjacent channel of its intention to initiate or change wireless operations and the likelihood of interference from the low power TV or translator station within its licensed geographic service area. The notice should describe the facilities, associated service area and operations of the wireless licensee with sufficient detail to permit an evaluation of the likelihood of interference. Upon receipt of such notice, the digital LPTV or TV translator licensee must cease operation within 120 days unless: (1) it obtains the agreement of the wireless licensee to continue operations, (2) the commencement or modification of wireless service is delayed beyond that period (in which case the period will be extended), or (3) the Commission stays the effect of the interference notification, upon request.

band. These provisions, established in the *Digital LPTV Order*,<sup>105</sup> allow for a primary wireless licensee in the 700 MHz band to notify affected digital low power television stations of its intent to initiate or change operations. Upon receipt of such notice, the digital low power television station must cease operation of any interference-causing facility within 120 days, unless it obtains the agreement of the primary licensee to continue operations.

36. Since the Commission adopted these provisions in 2004, new wireless licenses have been informally using them to notify analog LPTV and TV translator stations in the 700 MHz band of their intent to initiate or modify their service and to request that they terminate operations. Verizon, Cellular South, NPSTC, and CTIA all support formally extending the notification and termination provisions to analog low power television facilities in the 700 MHz band and no commenter opposed our proposal.<sup>106</sup> For example, NPSTC explains that “from a public safety perspective, whether a secondary low power television station is digital or analog is irrelevant; if it interferes with an existing public safety primary operation or stands in the way of deploying such primary operations in the 700 MHz band, expeditious steps must be taken to remove the conflict.”<sup>107</sup> Furthermore, CTIA comments that “by extending this framework to analog stations, the Commission will enable 700 MHz licensees to obtain rapid access to their licensed spectrum.”<sup>108</sup> We conclude that extension of the notification and termination provisions to analog low power television facilities will facilitate the clearing of the 700 MHz band in advance of the **December 31, 2011** out-of-core deadline.

### C. Increase in Power Levels for VHF Channels

37. In the *Further Notice*, we stated that, “although analog stations in the low power television services operate primarily in the UHF band and their digital facilities operate exclusively in the UHF band, in view of spectrum shortages, and considering the more limited service area and often rural locations of these stations, we seek comment on whether VHF channels, which are now underutilized, accompanied by additional power, provide a viable alternative for continued operation.”<sup>109</sup> Currently the power limit for low power VHF channels is 300 watts, whereas for UHF channels it is 15 kilowatts.<sup>110</sup> As a result of the full power digital television transition, some full power stations on VHF channels have experienced reception problems and such problems have not been alleviated even by allowing these stations to operate with the maximum power permitted under the full power television rules. We expect that the same or even worse problems may arise when low power television stations operating on VHF channels convert to digital given the fact that low power stations operate with considerably less power than full power stations. To prevent such problems, we are modifying our rules to permit low power stations operating on VHF channels 2-13 to operate with up to 3 kilowatts of power, which is the maximum power such stations are permitted to operate with in analog. We decline the suggestion of some commenters to increase the power limit for low power television UHF channels and we retain the existing 15 kilowatts for these channels.<sup>111</sup> At this power level, low power television stations on UHF channels should be able to continue to provide coverage to their community of license without problems.

<sup>105</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19355 – 19557.

<sup>106</sup> Verizon Comments 2-3; Cellular South Comments 6-7; NPSTC Comments 3-5; CTIA Comments 9-11.

<sup>107</sup> NPSTC Comments at 4 -5.

<sup>108</sup> CTIA Comments at 11.

<sup>109</sup> See *Further Notice*, 25 FCC Rcd at 13848.

<sup>110</sup> See 47 C.F.R. § 74.735.

<sup>111</sup> See Lotus Comments at 6; Rincon Reply Comments at 2.

38. We received numerous comments in favor of increasing the VHF power levels for digital low power television stations.<sup>112</sup> NTA notes that increasing the limit to 3 kilowatts would help overcome existing reception problems and make the VHF bands more useable for low power service, particularly as a new channel for stations that may be displaced as a result of the Commission's channel repacking proposal.<sup>113</sup> On the other hand, NPR opposes any increase in power for digital channel 6 noting that an increase in power would increase the likelihood of additional interference to adjacent noncommercial educational (NCE) radio stations.<sup>114</sup> We disagree. As NPR noted, we authorize digital low power television stations on a secondary basis. Therefore, regardless of their power level, low power television stations are required to protect the first adjacent NCE radio stations if there is actual interference to these stations.

39. We decline to adopt the proposal set forth by Lotus TV and LPTV Licensee Group which argue that the Commission should use its existing analog protected contours for digital stations.<sup>115</sup> Changing the protected contours for digital stations would not help to resolve the issue of reception of stations operating on VHF channels. Furthermore, when we determined the protected contours for the low power television service, we noted that the values for contours that were adopted would yield digital low power television service areas comparable in size to analog low power television stations' service areas.<sup>116</sup> This is both a logical and a desirable outcome. Therefore, we find that changing the protected contours for digital low power television stations, as proposed by Lotus TV and LPTV Licensee Group, is neither a useful nor a necessary step to aid these stations in their transition to digital.<sup>117</sup>

#### **D. Dismissal of Analog Applications**

40. We adopt our proposal to dismiss all unamended applications for new analog low power television facilities that remain pending after the May 24, 2010 deadline to amend these applications to specify operation on digital facilities. As indicated in the *Further Notice*,<sup>118</sup> the staff notified all pending applicants for new analog low power facilities that they must amend their pending applications to specify digital operations by May 24, 2010, and that the staff would not process those analog applications that were not amended by the deadline.<sup>119</sup> Some applicants did not comply with the staff directive and their analog applications remain unamended. We agree with commenters who support dismissal of these long pending analog applications.<sup>120</sup> Dismissal will further the digital low power television transition by encouraging stations to seek new digital facilities. As Cellular South asserts "any other course of action would frustrate the expeditious transition of LPTV stations to digital and impose an unnecessary workload on the staff processing applications for analog facilities that would be required to convert to

<sup>112</sup> See, e.g., NTA Comments at 7 and Reply Comments at 15-16; LPTV Licensee Group Comments at 10; Lotus Comments at 5-6; LPTV Entrepreneurs Comments at 8; Venture Comments at 4-5; Folse Comments at 2; Rincon Reply Comments at 2; Renard Reply Comments at 3; Venture Reply Comments at 8; Joint Commenters Reply Comments at 4.

<sup>113</sup> See NTA Comments at 7.

<sup>114</sup> NPR Comments at 8-9.

<sup>115</sup> See Lotus TV Comments at 5-7; LPTV Licensee Group Comments at 10.

<sup>116</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19359-60.

<sup>117</sup> See also opposing comments of NTA at 17-18.

<sup>118</sup> *Further Notice*, 25 FCC Rcd at 13842-43.

<sup>119</sup> See "Applicants for New Low Power Television and TV Translator Stations Must Convert to Digital By May 24, 2010," *Public Notice*, 25 FCC Rcd 2817 (MB 2010).

<sup>120</sup> See Harris Comments at 9; Cellular South Comments at 8; CTIA Comments at 6; Venture Reply Comments at 7.

digital in a very short time period.”<sup>121</sup>

41. We are not persuaded by commenters who oppose this approach. LPTV Entrepreneurs asserts that dismissing the pending applications for new low power analog facilities will impose a heavy financial burden on “LPTV applicants that have spent thousands of dollars in legal and filing fees only to be shut out of the opportunity originally intended for LPTV to serve the public via broadcast or other ancillary services.”<sup>122</sup> Although we recognize LPTV Entrepreneurs’ concern, all applicants seeking authority to operate new analog stations were afforded a sixty-day opportunity to amend their applications by May 24, 2010 to request authority to broadcast on digital facilities.<sup>123</sup> Those applicants whose analog applications remain pending failed to amend them by the May 24, 2010 deadline. Furthermore, low power television applicants have been on notice since 2004, when the Commission released the *Digital LPTV Order*,<sup>124</sup> that low power television service would transition to digital broadcasting “at some fixed time after the deadline for full-service television stations,” and that new analog station applications therefore would become obsolete.<sup>125</sup> Airwaves argues that the filing freeze announced in the *Further Notice* should not apply to communities that demonstrate a need for local origination.<sup>126</sup> The *Further Notice* already affords applicants relief from the filing freeze through a waiver process. A modification of the filing freeze is therefore unnecessary. As provided in the *Further Notice*, applicants may request a waiver of the freeze if they believe a waiver is necessary for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances require relocation to a new tower site.<sup>127</sup> As with any request for waiver of our rules, a request for waiver of the freeze will be granted only upon a showing of good cause and when grant of the waiver will serve the public interest.<sup>128</sup>

## E. Surrender of Channels

### 1. Procedures for Surrender of Channels

42. In order to ensure that all stations are prepared to meet the **September 1, 2015** digital transition date, we adopt our proposal and require stations that have not already taken steps to convert to notify the Commission at least 30 days prior to the deadline of their decision to either: (1) “flash cut” their existing analog facility to digital (at which time their analog license will be replaced by a new digital license) or (2) to surrender their analog station license and continue operating their digital companion channel.<sup>129</sup> Stations that have already completed their digital conversion will not be required to submit a notification. Such notifications will ensure that stations settle on their final digital conversion plan a sufficient amount of time before the final transition date while also ensuring an orderly digital transition. Finally, we delegate to the Media Bureau the authority to determine the timetable and procedures for

<sup>121</sup> Cellular South Comments at 8.

<sup>122</sup> LPTV Entrepreneurs Comments at 9.

<sup>123</sup> See “Applicants for New Low Power Television and TV Translator Stations Must Convert to Digital By May 24, 2010,” Public Notice, 25 FCC Rcd 2817 (MB 2010); see also *Further Notice*, 25 FCC Rcd at 13842-3.

<sup>124</sup> *Digital LPTV Order*, 19 FCC Rcd at 19337.

<sup>125</sup> *Digital LPTV Order*, 19 FCC Rcd at 19338.

<sup>126</sup> See Airwaves Comments at 4.

<sup>127</sup> *Further Notice*, 25 FCC Rcd at 13843.

<sup>128</sup> *Id.*

<sup>129</sup> *Further Notice*, 25 FCC Rcd at 13844.

these notifications.

43. We agree with those commenters that support our simple notification approach, which does not require prior Commission approval for the termination of analog service.<sup>130</sup> Stations in the low power television service currently are permitted to terminate their analog operations and transition to digital without prior Commission approval. We see no need to change this policy and we believe that stations should continue to have the flexibility to decide when to terminate their analog operation and begin digital operation. As H&D notes, our simplified approach will allow low power stations to immediately decrease their operational costs, and will free up additional channels for digital displacement of out-of-core stations.<sup>131</sup> While we initially contemplated that most stations would operate their analog channels and digital companion channels in parallel until the completion of the low power transition, we agree with H&D that there is no need to require continued operation of analog facilities beyond what individual stations deem necessary.<sup>132</sup> Many low power stations have already completed their transition, as have many of their viewers.<sup>133</sup> Therefore, it is not necessary to require low power stations to make a public interest showing to permit the termination of analog operations prior to the **September 1, 2015** deadline. Instead, we find that a simple notification only by those stations that have not converted to digital is all that is necessary so that the Commission can track the overall digital transition and return of channels (in addition to the viewer notifications that we outline later).

44. We also agree with the Joint Commenters that low power stations are the most familiar with their own local markets and should be permitted to transition prior to the **September 1, 2015** deadline if they believe their audience has sufficiently transitioned to digital televisions.<sup>134</sup> We further agree that allowing stations to transition as they see fit makes sense from an economic perspective because it will allow them to avoid “incur(ing) the cost of broadcasting on an analog channel if individuals are not watching the station.”<sup>135</sup> We find it unnecessary to adopt PBS’ proposed requirement that stations with companion channels must provide 30 days prior notice to the Media Bureau before they terminate their analog channels and operate only on their digital companion channel.<sup>136</sup> Prior notification to the Commission is unnecessary for the reasons stated above and would serve no purpose while imposing an undue burden on stations.

45. At the same time, as long as a station desires to do so, it should be allowed to continue providing analog service until the final **September 1, 2015** transition deadline. Thus we reject NTA’s proposal that we require stations currently operating digital companion channels to discontinue analog operations within 18 months of the release of this *Second Report and Order* or not later than 18 months after filing a license application for their digital channel. Stations may need to continue operating their analog channel while they develop their digital audience or because their analog facilities operate as a link for their translator network. Moreover, as explained above, we have determined that low power stations should have the opportunity to postpone their digital transition until after the Commission completes any future spectrum reallocation, assuming a reallocation is completed before 2015. Therefore, it is imperative that stations have as much time as necessary to operate both analog and digital companion

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<sup>130</sup> See, e.g., Venture Comments at 5-6; Joint Commenters Comments at 3; H&D Comments at 3.

<sup>131</sup> H&D Comments at 3.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Joint Commenters Comments at 3.

<sup>135</sup> *Id.*

<sup>136</sup> PBS Comments at 8-9.

channels before the final transition deadline. Requiring stations already operating on digital companion channels to terminate analog operation prior to the **September 1, 2015** deadline could undermine the success of their digital transition. With respect to Cordillera's request that the staff complete processing of digital, on-channel, flash-cut minor change applications within ten business days of submission so long as there is no expansion of proposed service or international coordination requirement,<sup>137</sup> we direct the Media Bureau to process and grant as quickly as possible those low power television digital applications that are accurate and complete, and that do not require international coordination.

## 2. Requirement for Timely Construction of Digital Facilities

46. We adopt our proposed policy whereby, if an entity holds a construction permit for an unbuilt analog and unbuilt digital companion channel, and the analog permit expires and is forfeited, the digital construction permit shall be forfeited notwithstanding the later expiration date on the digital construction permit.<sup>138</sup> We believe that adoption of this policy is necessary to ensure that low power television stations complete construction of their proposed facilities in a timely fashion and to ensure the efficient use of valuable television spectrum. Otherwise, an entity that obtained an analog construction permit with a three-year construction period could effectively extend the duration of that permit by obtaining a corresponding digital construction permit with a deadline beyond the one on its underlying analog permit. Furthermore, for the reasons discussed below, we continue to believe that this approach is consistent with our established policy that analog and digital authorizations are part of single, unified authorization.

47. Alternatively, if a station completes construction of its digital facilities (whether a flash-cut or digital companion channel) and begins operating those facilities and files a license application, we will permit the station to forego construction of its unbuilt analog station so long as digital construction is completed before the expiration date of the analog permit. We adopt this approach to encourage stations to complete their digital facilities and begin operating in digital as soon as possible.

48. Harris disagrees with our approach and maintains that an outstanding digital construction permit should not be forfeited because of the expiration of an associated analog construction permit that was not utilized.<sup>139</sup> Harris believes that the holder of an active digital construction permit should be allotted the time to build-out their digital facility as specified in the digital permit.<sup>140</sup> Harris suggests that the Commission send a letter of inquiry to the holder of an expired analog construction permit but active associated digital construction permit seeking written confirmation that it still plans on building out a digital facility within the timeframe specified by its digital construction permit.<sup>141</sup> Should the Commission fail to receive confirmation from the permit holder within a reasonable period of time, for example 60 days, then Harris recommends that the Commission initiate a proceeding to rescind the digital construction permit.<sup>142</sup> We decline to adopt Harris' approach as it runs contrary to our concept of a single, unified station license and is inconsistent with the policy adopted for the full power television digital transition.<sup>143</sup> Although a station's digital companion channel construction permit may possess a

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<sup>137</sup> Cordillera Comments at 3.

<sup>138</sup> See *Further Notice*, 25 FCC Rcd at 13844.

<sup>139</sup> Harris Comments at 9.

<sup>140</sup> *Id.* at 10.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> See Remedial Steps For Failure to Comply With Digital Television Construction Schedule, *Report and Order*, 18 FCC Rcd 7174, 7183-4 and n. 25 (2003).

later expiration date than the station's underlying analog construction permit, the Commission has always been clear that the station's two authorizations are part of a single, unified license. For example, when the Commission adopted its rules permitting stations to obtain a digital companion channel, it stated: "[A]s is the case with full-service television broadcasters' paired DTV channel, the low power broadcaster's companion digital channel will be considered part of its station's analog license...."<sup>144</sup> Therefore, to be consistent with this policy, a low power station that does not complete construction of its digital facilities prior to the expiration date of its unbuilt analog construction permit shall forfeit both its analog and digital construction permits.<sup>145</sup>

### 3. Notice to Viewers

49. In order to ensure that viewers of low power television stations are aware of the impending termination of analog service and stations' transition to digital operation on or before the **September 1, 2015** transition deadline, we require all stations in the low power television service that terminate their analog service after the effective date of the rule provisions in this proceeding, to provide notification to their viewers of their planned termination of analog service and transition to digital. Stations that have already terminated analog service and begun operating in digital prior to the effective date of the rule changes in this proceeding shall not be subject to this requirement. For those stations with the technical ability to locally-originate programming,<sup>146</sup> viewer notification must be done on the air at a time when the highest number of viewers is watching. As for those stations that lack the technical ability to locally originate programming, or conclude that airing of viewer notifications would pose some sort of a hardship, they may notify their viewers by some other reasonable means, e.g. publication of a notification in a local newspaper or by contacting the originating station to relay a crawl or service advisory to the communities that would be affected. We believe stations are best suited to determine the most effective means of reaching their viewers, and we shall therefore rely on their good faith efforts to decide the format of local notification.

50. Liberty, PBS, and Venture believe that low power television stations should notify their viewers prior to their termination of analog service, but argue that notification should not be mandatory.<sup>147</sup> PBS notes that, "because their own viewers are at stake, licensees have ample incentive to notify viewers in advance of their conversion to all-digital broadcasts."<sup>148</sup> Similarly, Liberty states that "stations that can feasibly inform their viewers of the impending digital transition will do so" because "no station wishes to lose viewers as the result of an inability to find the station after DTV transition."<sup>149</sup>

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<sup>144</sup> *Digital LPTV Order*, 19 FCC Rcd at 19390, n. 362.

<sup>145</sup> See *Malcolm G. Stevenson, Esq.*, 25 FCC 17042 (Vid. Div. 2010) (by failing to construct its digital facility within its original three-year analog construction period, applicant "voluntarily choose to deprive the public of digital television service"); see also *Alaska Broadcast Television, Inc.*, BPET-19960916KE, released March 21, 2011 (applicant "required to build out its analog facilities by expiration of the three-year analog construction permit, or toll the construction deadline, to maintain its digital authorization").

<sup>146</sup> All stations in the low power television service are permitted to originate some amount of local programming, such as public service announcements (PSAs). See 47 C.F.R. § 74.731(f) and (g) and 47 C.F.R. § 74.701(f). PSAs originated by TV translators are limited to 30 seconds each and not more than once per hour. Class A stations are required by the terms of their license to air local programming. See *Establishment of a Class A Television Service, Report and Order*, 15 FCC Rcd 6355 (2000).

<sup>147</sup> See PBS Comments at 9; Venture Comments at 5; Liberty Comments at 7; see also *Una Vez Mas* Comments at 4.

<sup>148</sup> PBS Comments at 9.

<sup>149</sup> Liberty Comments at 7.

Venture suggests that both full power and low power television stations participate in a voluntary public service campaign to encourage viewers to rescan their digital tuners and/or converter boxes in the months leading up to and following any low power television digital transition deadline.<sup>150</sup> Although we agree that it is in the stations' best interests to notify viewers of their impending termination of analog service, we conclude that notification should be mandatory to ensure that consumers are prepared when stations terminate their analog service. On the other hand, we also agree that there is no need to mandate "an extensive set of informative announcements nor to dictate in detail the content of such announcements"<sup>151</sup> since stations know their individual communities and how best to reach their viewers. We provided options for full power stations to best decide how to inform their viewers when we adopted consumer education requirements in conjunction with the full power television transition, and we believe similar flexibility should be afforded low power television stations as well.<sup>152</sup>

#### F. Class A Television Transition To Digital

51. We adopt our proposal, as supported by most commenters, to allow Class A stations to choose to either "flash cut" to digital on their analog channel or to operate on their digital companion channel while preserving their primary, protected status for the channel they choose to retain for digital operations.<sup>153</sup> We agree with Joint Commenters that it is in the public interest to provide Class A licensees a method to select their digital channels because it will give them the opportunity to "evaluate the market situation and make a determination which channel would provide the best, interference-free service to the public."<sup>154</sup>

52. We will not adopt, however, the procedures that we proposed in the *Further Notice* for Class A stations to secure primary, protected status on their converted digital channel.<sup>155</sup> In the *Further Notice*, we proposed that Class A stations file a minor change application to transfer their primary status from their analog channel to their desired digital channel (whether through on-channel flash cut or to their digital companion channel).<sup>156</sup> We also proposed to require these stations to certify that their proposed facilities meet all Class A interference protection requirements.<sup>157</sup> As Liberty points out, for Class A stations that have already obtained their digital authorization, the submission of another minor change application is unnecessary.<sup>158</sup> Since the release of the 2004 *Digital LPTV Order*, we have allowed Class A stations to "flash cut their analog channel to digital operation at any time and retain their primary regulatory status."<sup>159</sup> In fact, the staff has granted many such flash-cut applications for Class A stations and these stations have already transferred their primary status to their digital facilities. There is no need

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<sup>150</sup> Venture Comments at 5.

<sup>151</sup> Liberty Comments at 7.

<sup>152</sup> See DTV Consumer Education Initiative, *Report and Order*, 23 FCC Rcd 4134 (2008) (*DTV Consumer Education Report and Order*).

<sup>153</sup> See LPTV Licensee Group Comments at 2, 8; Harris Comments at 10; Entravision Comments at 11-12; Cohen Comments at 3; Venture at 6; Airwaves Comments at 2; NTA Reply Comments at 1; Joint Commenters Reply Comments at 4.

<sup>154</sup> Joint Commenters Reply Comments at 4.

<sup>155</sup> *Further Notice*, 25 FCC Rcd at 13844.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> See Liberty Comments at 6.

<sup>159</sup> *Digital LPTV Order*, 19 FCC Rcd at 19379.

for these stations to file another minor change application. Class A stations that choose to pursue a flash-cut conversion in the future can simply follow our existing procedures.<sup>160</sup>

53. We conclude that the procedures proposed in the *Further Notice* are also unnecessary for Class A stations choosing to transfer their primary, protected status from their analog facility to their digital companion channel facility. Consequently, we adopt a simpler, more streamlined approach as suggested by Liberty.<sup>161</sup> Liberty proposes that “Class A stations seeking to continue post-transition operations on their current digital channels should be allowed simply to file a license application” to change their digital companion channel to Class A status.<sup>162</sup> Liberty explains that “Class A stations operating a digital companion channel have already sought a construction permit for such facilities, have built and, in many cases, licensed them, and are operating them.”<sup>163</sup> Liberty concludes that “the only change for such stations is the addition of the Class A designation.”<sup>164</sup> As for the requirement that Class A stations certify that their proposed facilities meet all Class A interference protection requirements, such certification can be done in the license application. We agree with Liberty that allowing these Class A stations to forgo filing a minor change application and only file a license application to transfer their primary protected status to their digital companion channel facilities will save Class A licensees valuable resources.<sup>165</sup> Therefore, Class A stations choosing to transfer their primary status from their analog channel to their digital companion channel will be required to file FCC Form 302-CA (Application for Class A Television Broadcast Station Construction Permit or License) and certify that their digital companion channel facilities meet all Class A interference protection and eligibility requirements.

54. We will not adopt NTA’s proposal to set a final deadline by which Class A stations would be required to “irrevocably select their final DTV channel.”<sup>166</sup> Although we adopted a similar “channel election” approach in the full power television transition, channel election would serve no purpose for Class A stations because, unlike full power television stations, stations in the low power television stations are not allocated pursuant to a Table of Allotments and, as a result, there is no need to formally track channel elections.

#### **G. Ancillary and Supplementary Services**

55. We adopt our proposal in the *Further Notice* to widen the scope of our ancillary and supplementary services rule<sup>167</sup> to include low power television station permittees operating pursuant to a digital Special Temporary Authorization (STA).<sup>168</sup> Full power television licensees and permittees operating pursuant to STA as well as low power television licensees are already subject to this rule.<sup>169</sup> To ensure compliance with the mandate of Section 336(e) of the Communications Act,<sup>170</sup> that the public

<sup>160</sup> See Establishment of a Class A Television Service, *Report and Order*, 15 FCC Rcd 6355 (2000).

<sup>161</sup> See Liberty Comments at 6.

<sup>162</sup> Liberty Comments at 6.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Liberty Comments at 6.

<sup>166</sup> See NTA Reply Comments at 11.

<sup>167</sup> 47 C.F.R. § 73.624(g).

<sup>168</sup> See *Further Notice*, 25 FCC Rcd at 13848.

<sup>169</sup> See 47 C.F.R. § 73.624(g).

<sup>170</sup> 47 U.S.C. § 336(e).

recover a portion of the value of the public spectrum resource made available for commercial use, as well as to avoid unjust enrichment of broadcasters that use that resource, we conclude that low power television permittees operating pursuant to an STA also should be subject to this rule. Therefore, low power television permittees operating pursuant to an STA will be required to file the annual Ancillary and Supplementary Services Report (FCC Form 317) **beginning December 1, 2011**, and will be required to pay a fee of five percent of the gross revenues of any ancillary and supplementary services they provide. We find that such a requirement will enable the Commission to assess the nature of ancillary and supplementary services, if any, that are provided by low power television permittees and the extent to which feeable services are offered.<sup>171</sup>

56. As discussed further below, Harris, SmartComm and Venture disagree that all low power television permittees operating pursuant to digital STA should be subject to the ancillary and supplementary requirements.<sup>172</sup> Airwaves believes that low power television permittees should be allowed to provide ancillary and supplemental services without a fee, so long as they continue to meet their obligation to provide at least one channel of free over-the-air television service.<sup>173</sup> Harris argues that the Commission should not restrict the development of new innovative broadcast offerings by placing fees on ancillary and supplementary services revenue earned by low power television stations operating pursuant to a digital STA.<sup>174</sup> While we seek to encourage innovative service offerings by low power television stations and to further the financial wellbeing of these stations, we are mindful of our statutory obligation under Section 336(e) to recover a portion of the value of the public spectrum resource made available for commercial use and avoid unjust enrichment of broadcasters that use that resource. We believe that the imposition of the fee for ancillary digital revenues should not depend on the type of authorization that covers the digital operation.<sup>175</sup> Therefore, in order to accurately assess the extent of such services and ensure that we recover a portion of the value of the spectrum used, low power television permittees operating pursuant to digital STA will be subject to the ancillary and supplementary requirements.

57. SmartComm argues that low power television broadcasters have smaller coverage areas and more rural coverage areas, and thus the financial impact of a five percent ancillary service fee will be felt to a much greater degree than by full power broadcasters.<sup>176</sup> SmartComm asks that the Commission exempt all low power broadcast licensees from the five percent ancillary service fee obligation or exempt all low power television ancillary and supplementary services from the fee for revenues below a certain threshold (analogous to the *de minimis* exemption to the Universal Service Fund for carriers with a calculated contribution of less than \$10,000 per year).<sup>177</sup> Low power television licensees are already subject to the Section 336(e) reporting and fee requirements, and the *Further Notice* did not propose revisiting this requirement. To the extent that SmartComm seeks to do so, its comments are beyond the

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<sup>171</sup> In the 2004 *Digital LPTV Order*, the Commission added LPTV, TV translators and Class A television stations to Section 73.624(g). See *Digital LPTV Order*, 19 FCC Rcd at 19391; see also 69 FR 69325 (Nov. 29, 2004). That rule change is reflected in the revised version of Section 73.624(g) set forth in Appendix B.

<sup>172</sup> Harris Comments at 2; SmartComm Comments at 2-3 and 6-7; Venture Comments at 6; Airwaves Comments at 2.

<sup>173</sup> Airwaves Comments at 2.

<sup>174</sup> Harris Comments at 2.

<sup>175</sup> See LPTV Licensee Group Comments at 10, note 14.

<sup>176</sup> SmartComm Comments at 2-3 and 6-7.

<sup>177</sup> *Id.*

scope of this proceeding.<sup>178</sup> To the extent SmartComm seeks only to avert the application of the ancillary and supplementary fee requirements on low power television permittees, we have explained above why we disagree. We therefore reject SmartComm's proposal.

#### H. Minor Change Definition

58. To ensure that low power television applications for "minor change" remain just that, and to ensure that stations continue to provide coverage to viewers that rely on their service, we adopt our proposal and expand the "30-mile" rule currently applied to digital displacement applications to all low power television modification applications.<sup>179</sup> In the *Digital LPTV Order*, the Commission changed the minor change processing rule for digital low power television displacement applications filed to replace channels that are displaced by full-service NTSC or DTV station or by a 700 MHz commercial wireless or public safety operation.<sup>180</sup> The rule was changed so that such applications may propose a change in transmitter site of no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's community of license, as provided in Section 76.53 of the rules.<sup>181</sup> The Commission found that such a change would help to prevent applicants from using the displacement process to propose greater than needed modifications to their facilities.<sup>182</sup> Outside of the displacement context, low power television stations can file any modification application (both analog and digital) as a "minor change" as long as there is contour overlap between the proposal and the station's existing facilities.<sup>183</sup> There is no limitation as to how far a station may relocate its transmitter site, as long as some contour overlap is demonstrated. Therefore, a station is able to frustrate the intent of the minor change rule by proposing a modified facility that is a substantial distance from the station's existing location while showing only a very slight amount of contour overlap. Viewers of such a station, who have come to rely on its service, may be left behind. Furthermore, because low power television minor change applications are not subject to a filing fee, stations are able to avoid paying an application filing fee when they seek consent to make these changes. Therefore, we believe that expansion of the 30-mile rule to all modification applications (not just displacement applications) is necessary to enforce the original intent of the minor change rule.

59. For these reasons, we believe that expansion of the 30-mile rule to all modification applications (not just displacement applications) is necessary to enforce the original intent of the minor change rule. Accordingly, we expand application of the rule so that any digital low power television modification that proposes a change in transmitter site of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location will be considered a new proposal for low power television stations. In effect, we will continue to treat transmitter site changes that are truly minor as a minor change and those that involve a substantial relocation of facilities will be deemed a major change. We agree with Harris that the 30-mile rule "provides LPTV stations with sufficient flexibility to adjust their transmitter site, if necessary, without violating the intent of the Commission's minor change

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<sup>178</sup> As for SmartComm's suggestion that the Commission should clarify that at least a portion of the LPDTV spectrum can be leased to wireless providers, we find this topic to be beyond the scope of this proceeding. SmartComm Comments at 6-7. Similarly, Venture's proposal that the Commission classify analog operations on channel 6 post digital transition as an ancillary or supplemental service such that its revenue would be subject to a 5% fee is also outside the scope of this proceeding. Venture Comments at 6.

<sup>179</sup> See *Further Notice*, 25 FCC Rcd at 13847.

<sup>180</sup> *Digital LPTV Order*, 19 FCC Rcd at 19377.

<sup>181</sup> *Id.* at 19376.

<sup>182</sup> *Id.*

<sup>183</sup> See 47 C.F.R. §§73.3572(a)II (analog) and 74.787(b) (digital).

rule.”<sup>184</sup>

60. A number of commenters expressed concern that expansion of the 30-mile rule to all modification applications may adversely affect low power stations’ ability to make needed changes to their facilities.<sup>185</sup> For example, PBS maintains that translator stations in Western states “may need to make use of the existing minor change rule, or may need a waiver of the 30-mile rule, “in order to adjust their disparate translator setup to avoid interference from and with other new electromagnetic spectrum uses.”<sup>186</sup> LPTV Licensee Group requests that the Commission permit a waiver of the rule “if a station is displaced and cannot survive without moving more than 30 miles.”<sup>187</sup> Venture points out that channel congestion in many markets makes locating a useable allotment difficult for many low power television operators.<sup>188</sup> Joint Commenters argue that this congestion will be exacerbated by implementation of the Broadband Plan and the mandatory conversion to digital.<sup>189</sup> Venture and Joint Commenters are concerned that restricting a minor change to within 30 miles from the transmitter site will further limit the options available for low power television stations to construct a viable, usable facility.<sup>190</sup> Airwaves argues that the low power industry is still learning about digital television and that stations may need to move their facilities to “put a bigger signal into the community to be served.”<sup>191</sup> One Ministries points out that “LPTV stations are often owned by minorities and educational organizations that don’t have exhaustive financial resources, and it is often necessary to move more than 30 miles to find economically priced tower space and to cover sufficient population to make LPTV stations economically viable or to avoid causing interference to other TV stations.”<sup>192</sup>

61. It is not our intent to preclude low power television stations from making necessary changes to their facilities, especially changes that are needed to ensure a station’s continued operation as a result of displacement or spectrum reallocation. Expansion of the 30-mile rule will not preclude stations from seeking needed facility modifications. Stations may continue to propose necessary modifications, but some proposals will be deemed “major changes” necessitating a waiver if an applicant seeks to have its application processed as a minor change. As suggested by the commenters, we will provide full and expedited consideration to requested waivers of the 30-mile rule to ensure that stations are able to make those modifications necessary to ensure continued operation as a result of interference, displacement or reallocation of their operating channel. Furthermore, the technical rule changes adopted in this proceeding, such as to permit greater operating power on VHF channels, to permit stations to specify the actual vertical patterns of their proposed facilities and to allow use of full power DTV emission masks by low power stations, will provide low power stations with the additional tools to engineer facilities so that they can provide continued service to their viewers within the confines of the 30-mile rule.

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<sup>184</sup> Harris Comments at 10. We note that stations must complete construction and file a license application for each facility authorized by a minor modification before they may propose a further minor modification if the combined changes would not comply with the 30-mile rule.

<sup>185</sup> See, e.g., PBS Comments at 9-10; LPTV Licensee Group Comments at 10.

<sup>186</sup> PBS Comments at 10.

<sup>187</sup> LPTV Licensee Group Comments at 10.

<sup>188</sup> Venture Comments at 6 and Reply Comments at 8.

<sup>189</sup> Joint Commenters Reply Comments at 4.

<sup>190</sup> Venture Comments at 6-7 and Joint Commenters Reply Comments at 4.

<sup>191</sup> Airwaves Comments at 3.

<sup>192</sup> One Ministries Comments at 2.

62. Cellular South maintains that the 30-mile rule is “more liberal than the minor change rules for other broadcast services” and suggests that the Commission require low power applicants to “propose overlap of at least 35 percent of their existing service area” and “limit the distance an LPTV station could move its transmitter site on a minor change application to 15 miles, rather than 30 miles from the reference coordinates of the community of license.”<sup>193</sup> Cellular South believes that such requirements “would insure a continued connection with [a station’s] designated community of license and service area while still affording LPTV licensees substantial flexibility.” We disagree that further limitations to low power digital modifications are necessary. The 30-mile limitation for displacement applications has been in place for over six years and has worked well to ensure that applicants propose only necessary modifications to complete the displacement process.<sup>194</sup> We believe that expansion of the 30-mile rule to all modifications will serve the same purpose. To further restrict station modifications, as suggested by Cellular South, may result in stations being unable to make changes necessary to their continued existence and result in the loss of service. We therefore reject Cellular South’s proposal.

63. Finally, at the suggestion of duTreil, we clarify that, in addition to the proposed 30-mile limit, the protected contours of the station’s existing and proposed facilities must also overlap.<sup>195</sup>

#### I. Antenna Vertical Radiation Patterns

64. We revise our rules to begin accepting actual vertical pattern relative field values from applicants and permittees in the low power television service on a voluntary basis. Also, licensees and permittees will be permitted to submit actual vertical patterns for their existing facilities (in order to modify the official record of their station’s contour) by filing a minor change to their existing facilities or a minor modification of their existing construction permit. We will revise FCC Forms 346 and 301-CA to accommodate the acceptance of actual vertical pattern relative field values.

65. In the *Further Notice*, we found that low power television stations use a variety of transmitting antennas designed to produce widely differing vertical patterns.<sup>196</sup> As a result, use of assumed vertical antenna patterns, as has been our practice since the 2004 *Digital LPTV Order*,<sup>197</sup> has been affecting to varying degrees the accuracy of service area and interference predictions. This in turn may have been limiting low power television stations from engineering their digital facilities to best serve the needs of their viewers. It was for this reason that in the *Further Notice* we proposed to revise the assumed vertical antenna patterns that the Commission adopted in the 2004 *Digital LPTV Order*.<sup>198</sup> We now conclude that by incorporating the actual vertical antenna patterns into our interference analysis we will achieve a more realistic determination of the service areas of these stations and their potential for interfering with other stations, as well as more accurate determinations of application mutual exclusivity. Realizing the full benefits of this approach will require the prediction model to apply the vertical relative field strengths of the antennas used by existing stations, thereby enabling more realistic predictions of their “desired” signal strengths and “interference masking” effects on the service of other stations.

66. We shall not, however, require that all licensees, permittees and applicants for low power television facilities submit their actual vertical antenna patterns. We have received numerous comments

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<sup>193</sup> Cellular South Comments at 9.

<sup>194</sup> *Id.*

<sup>195</sup> See duTreil Comments at 3. We note that this requirement was set out in the *Further Notice*, 25 FCC Rcd at 13846, ¶ 38.

<sup>196</sup> *Further Notice*, 25 FCC Rcd at 13848.

<sup>197</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19360.

<sup>198</sup> *Further Notice*, 25 FCC Rcd at 13847.

and reply comments in regard to this subject.<sup>199</sup> The commenters unanimously agree that it will be beneficial to have the option of submitting actual vertical pattern relative field values. In some instances, however, the commenters disagree as to how we should implement such changes. Although Harris suggests that the Commission obtain such data from all existing low power television stations in order to “maximize the utilization of broadcasters existing spectrum allocations,”<sup>200</sup> we find that such a requirement may be costly and burdensome to applicants that may not have the need or means to prepare an engineering showing of their actual vertical pattern. Therefore, rather than requiring that all existing stations and permittees, and all future applicants submit this information, we shall instead use the assumed vertical patterns set forth in Section 74.793(d) for applicants and permittees that choose not to submit their actual vertical patterns.<sup>201</sup> We find the burden such a task would impose on applicants greatly outweighs the spectrum maximization benefit that Harris believes would come from it. We believe that by the **September 1, 2015** transition date those stations that find it useful to do so will have an opportunity to submit their actual vertical patterns.

67. Venture states that it “is concerned by the number of LPTV construction permits granted that propose antenna patterns that just do not work under the laws of physics.”<sup>202</sup> For example, Venture cites to applications that “propose horizontal patterns that range from full field to less than 10 percent field in less than 10 degrees . . . .”<sup>203</sup> Further, Venture states that “construction permits have been granted with antenna patterns that propose to lower field strength to 0.001 field 90 degrees off horizontal full field of an antenna pattern.”<sup>204</sup> Venture recommends that the Commission “revise its rules to prohibit field strength off of any antenna to be less than 0.01 field and should not allow any signal strength proposal to fall by more than 50 percent within 10 degrees.”<sup>205</sup> We decline to adopt Venture’s proposal. Applicants, by specifying a specific antenna pattern, will certify that such a pattern can be built by manufacturers. It is the applicant’s responsibility to make sure that in actuality its pattern can be designed. PBS noted that for the foreseeable future, interference analysis will be based on a mix of actual and assumed antenna patterns.<sup>206</sup> Thus, PBS recommends that the Commission give “special consideration to waiver requests that are premised on the notion that the mix of actual and assumed patterns creates an overestimation of a proposed facility’s interference potential to other stations.”<sup>207</sup> We shall continue to consider alternative showings contained in waiver requests wherein applicants will continue to have an opportunity to discuss any issues, including compliance with interference rules, and bring any issues to the staff’s attention.

#### **J. Use of Full Power DTV Emission Mask**

68. In order to provide more flexibility for low power television stations to secure channels, we adopt our proposal to permit low power television applicants to use the DTV emission mask available

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<sup>199</sup> See, e.g., NTA Comments at 4-5 and Reply Comments at 12-13; LPTV Licensee Group Comments at 9; Harris Comments at 11; Cohen Comments at 3; Cellular South Comments at 10; Venture Comments at 7; Airwaved Comments at 3; duTreil Comments at 3-4; PBS Comments at 10.

<sup>200</sup> See Harris Comments at 11.

<sup>201</sup> See 47 C.F.R. § 74.793(d).

<sup>202</sup> See Venture Comments at 7.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> See PBS Comments at 10.

<sup>207</sup> *Id.*

to full power television stations to protect existing stations operating on first adjacent channels.<sup>208</sup> In the *Further Notice*, we noted that the *Digital LPTV Order* adopted the use of relaxed emission masks, specifically simple and stringent masks.<sup>209</sup> However, over time the staff has received numerous waiver requests from low power television station applicants to substitute the full power DTV emission mask.<sup>210</sup> The applicants argue that in areas where frequencies are not available, use of the full power DTV emission mask will enable them to secure a channel even though it will cost more to install such a mask. Furthermore, the Broadband Plan recommended allowing “LPTV stations to use certain technologies (such as mask filters) to enable more efficient channel allotments...”<sup>211</sup> We conclude that our current approach, using the two different emission masks that are part of the low power television rules, needlessly limits these stations from identifying a workable channel, and that use of the full power television DTV emission mask may be the preferable approach for some low power television stations.

69. We agree with those commenters that support allowing low power television applicants to specify the use of the full power television DTV emission mask because this can accommodate additional LPTV stations and enable more efficient use of the available spectrum.<sup>212</sup> As NTA states, the full power DTV emission mask will enable licensees to use a channel that is adjacent to a channel used at the same or a nearby antenna location.<sup>213</sup> This will be important for low power television stations with the need for increasing adjacent channel spacing to accommodate possible spectrum reallocation initiatives. Cellular South agrees that allowing low power television stations to use the full power DTV emission mask will allow for more efficient reallocations and, in addition, states that the mask will lessen interference by low power television stations on channel 51 to lower 700 MHz wireless operations.<sup>214</sup>

#### **K. Issues Outside the Scope of the Proceeding**

70. A number of commenters raised issues that were not raised in the *Further Notice*. NPR, Venture, Syncom, and Signal all raise issues with respect to the use of channel 6 for low power television operations.<sup>215</sup> LPTV Entrepreneurs proposes that low power television licensees be allowed to participate in the incentive auction contemplated by the Broadband Plan.<sup>216</sup> Cohen recommends that the Commission consider expanded freeze waiver criteria should the Commission implement a freeze on new

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<sup>208</sup> See 47 C.F.R. §73.622(h)(1).

<sup>209</sup> *Further Notice*, 25 FCC Rcd at 13849 citing *Digital LPTV Order*, 19 FCC Rcd at 19400-19405; 47 C.F.R. §74.794(a)(2) and 74.793(c). Simple and stringent masks are defined at 47 C.F.R. § 74.794(a)(2)(i) and (ii).

<sup>210</sup> See 47 C.F.R. §73.622(h)(1).

<sup>211</sup> See *Broadband Plan*, at 94.

<sup>212</sup> See, e.g., Verizon Comments at 3-4 and Reply Comments at 7; PBS Comments at 11; NTA Comments at 5-6 and Reply Comments at 13; LPTV Licensee Group Comments at 7; Harris Comments at 12; Cellular South Comments at 11; Venture Comments at 7; H & D Comments at 3; duTreil Comments at 3; Renard Reply Comments at 3; Entravision Comments at 7.

<sup>213</sup> NTA Comments at 6.

<sup>214</sup> Cellular South Comments at 11.

<sup>215</sup> See NPR Comments at 3 -7; Venture Reply Comments at 2 – 6; Syncom Reply Comments at 1-3; Signal Reply Comments at 7– 9; see also Minority Media and Telecommunications Council Petition for Rulemaking, RM-11565, filed July 20, 2009 in MM Docket 09-35.

<sup>216</sup> See LPTV Entrepreneurs Comments at 4-5; see also *Broadcast Innovation NPRM*, 25 FCC Rcd at 16512 (seeking comment on whether low power stations should be permitted to participate in the Commission’s channel sharing efforts).

low-power translator facilities.<sup>217</sup> Venture requests that the Commission re-visit stations' compliance with the Class A eligibility requirements.<sup>218</sup> One Ministries proposes that low power television stations be allowed to assist in filling the need for wireless spectrum and be allowed to provide wireless content through using OFDM modulation standards instead of 8VSB.<sup>219</sup> Lastly, Cellular South, as supported by King Street Wireless and AT&T, suggests "that the Commission limit the filing of displacement applications to channels below Channel 50 in order to minimize the potential for interference to wireless operations in the 700 MHz band."<sup>220</sup> We find that these issues are beyond the scope of this proceeding or, as indicated, are being addressed in other proceedings. If the FCC were to be granted incentive auction authority by Congress, it is imperative that we consider, in keeping with the requirements of the legislation, how LPTV services would be impacted. Because these issues are addressed in other proceedings we shall not address them here.

#### IV. PROCEDURAL MATTERS

##### A. Final Regulatory Flexibility Act Analysis

71. The Final Regulatory Flexibility Analysis is attached to this Second Report and Order as Appendix C.

##### B. Final Paperwork Reduction Act of 1995 Analysis

72. This Second Report and Order adopts a revised information collection requirement subject to the Paperwork Reduction Act of 1995 ("PRA")<sup>221</sup> pertaining to DTV transition related issues.<sup>222</sup> Specifically, this Second Report and Order will: (1) require all low power television stations with facilities on channels 52-59 to submit a digital displacement application proposing an in-core channel (channels 2-51 excluding channel 37) not later than September 1, 2011; (2) require all low power television stations to provide notice of their upcoming digital transition to their viewers; (3) require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan; (4) require Class A TV station licensees to file a license application for either the "flash cut" channel on which they are now operating in analog or the digital companion channel they choose to retain for post-transition operations and certify therein that their proposed facilities meet all Class A interference protection requirements; (5) require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report; and (6) permit applicants and permittees in the low power television service to submit actual vertical pattern relative field values as part of their applications (FCC Form 346 and 301-CA) on a voluntary basis. These requirements will not go into effect until OMB has approved them and the Commission has published a notice announcing the effective date of the information collection requirement. For additional

<sup>217</sup> See Cohen Comment at 2-3; see also "Initiation of Nationwide, First-Come, First-Served Digital Licensing for Low Power Television and TV Translator Services Postponed until Further Notice," *Public Notice*, DA 10-1168, 25 FCC Rcd 8179 (MB 2010).

<sup>218</sup> See Venture Comments at 6.

<sup>219</sup> See One Ministries Comment at 1.

<sup>220</sup> See Cellular South Comments at 6; King Street Wireless Comments at 1; AT&T Reply Comments at 4; see also "Petition for Rulemaking and Request for Licensing Freezes," filed by CTIA – the Wireless Association and Rural Cellular Association, March 15, 2011 and "Media Bureau Seeks Comment on Petition for Rulemaking and Request for Licensing Freezes," *Public Notice*, RM 11626, DA 11-562, released March 28, 2011.

<sup>221</sup> The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

<sup>222</sup> See OMB Control No. 3060-0016 (Form 346).

information concerning the information collection requirement contained in this Report and Order, contact the Office of Managing Director (“OMD”), Performance Evaluation & Records Management (“PERM”), Cathy Williams, Cathy.Williams@fcc.gov, at 202-418-2918.

73. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

74. The Commission will send a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

## V. ORDERING CLAUSES

75. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 155(c)(1), 157, 301, 302, 303, 307, 308, 309, 312, 316, 319, 324, 332, 336, and 337, this Second Report and Order IS ADOPTED and the Commission’s rules ARE HEREBY AMENDED as set forth in Appendix B. The rules and procedures adopted in this Second Report and Order are effective 30 days after the date of publication of the summary of this Second Report and Order in the Federal Register, provided, however, that the rules and procedures that contain information collection requirements subject to the PRA shall not be effective until approved by OMB. The Commission will publish a notice in the Federal Register announcing when OMB approval for these rules has been received.

76. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Report and Order, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

77. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Second Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters****Comments**

AT&T Inc. (“AT&T”)  
Cohen, Dippell and Everist, P.C (“Cohen”)  
Consumer Electronics Association (“CEA”)  
Consumer Electronics Retailers Coalition (“CERC”)  
Cellular South, Inc. (“Cellular South”)  
Cordillera Communications, Inc. (“Cordillera”)  
CTIA- The Wireless Association (“CTIA”)  
duTreil, Lundin & Rackley, Inc. (“duTreil”)  
Entravision Holdings, LLC (“Entravision”)  
Folse Communications, LLC (“Folse”)  
George S. Flinn, Jr.  
Harris Corporation (“Harris”)  
Hatfield & Dawson Consulting Engineers, LLC (“H&D”)  
Inspiration television, Inc (“Inspiration”)  
Island Broadcasting Company (“Island”)  
Liberty University, Inc. (“Liberty”)  
Low Power Television Licensee Group (“LPTV Licensee Group”)  
Lotus TV of Houston, LLC (“Lotus TV”)  
LPTV Entrepreneurs  
Motorola, Inc. (“Motorola”)  
National Public Radio, Inc (“NPR”)  
National Public Safety Telecommunications Council (“NPSTC”)  
National Translator Association (“NTA”)  
Nickolaus E. Leggett  
One Ministries, Inc. (“One Ministries”)  
PBS, APTS, and CPB (“PBS”)  
Obidia Porras  
Signal Above LLC (“Signal”)  
Smartcomm, L.L.C. (“Smartcomm”)  
SpectrumEvolution.org (“SpectrumEvolution”)  
State Board of Education, State of Idaho (“State of Idaho”)  
John Terrill  
Trinity Christian Center of Santa Ana, Inc. (“Trinity”)  
Elizabeth Trinkle  
Venture Technologies Group, LLC (“Venture”)  
Verizon Wireless (“Verizon”)  
WLFM, LLC (“WLFM”)

**Reply Comments**

AT&T, Inc.  
Cesar Rincon International (“Rincon”)  
CTIA – The Wireless Association  
George S. Flinn, Jr.  
Harris Corporation  
Island Broadcasting Company (“Island”)  
King Street Wireless, L.P. (“King Street Wireless”)

S. Moore  
National Public Radio, Inc.  
National Translator Association  
Renard Communications Corporation (“Renard”)  
Signal Above, LLC  
Syncom Media Group, Inc. (“Syncom”)  
Una Vez Mas, LP (“Una Vez Mas”)  
Venture Technologies Group, LLC  
Verizon Wireless

**Ex Parte**

Jaime Arbona  
Blackstrap Broadcasting  
Joint Commenters  
Lin Television Corporation  
National Public Radio, Inc.  
Venture Technologies Group, LLC

**APPENDIX B****Final Rules****PART 73 – RADIO BROADCAST SERVICES**

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336

2. Amend Section 73.624(g) to read as follows:

Section 73.624 Digital television broadcast stations.

\* \* \* \* \*

(g) Commercial and noncommercial DTV licensees and permittees, and low power television, TV translator and Class A television stations DTV licensees and permittees, must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (b) of this section, which are *feable*, as defined in paragraphs (g)(2)(i) and through (ii) of this section.

\* \* \* \* \*

3. Amend Section 73.3572 to as a new subsection (h) as follows:

Section 73.3572 - Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

\* \* \* \* \*

(h) Class A TV station licensees shall file a license application for either the flash cut channel or the digital companion channel they choose to retain for post-transition digital operations. Class A TV stations will retain primary, protected regulatory status on their desired post-transition digital channel. Class A TV applicants must certify that their proposed post-transition digital facilities meet all Class A TV interference protection requirements.

**PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

4. The authority citation for Part 74 is amended to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554

5. Amend Section 74.731 to read as follows:

§ 74.731 Purpose and permissible service.

\* \* \* \* \*

(l) After 11:59 pm local time on September 1, 2015, low power television, TV translators and Class A television stations may no longer operate any facility in analog (NTSC) mode.

6. Amend Section 74.735 to read as follows:

§ 74.735 Power limitations.

\* \* \* \* \*

(b) The maximum ERP of a digital low power TV, TV translator, or TV booster station (average power) shall not exceed:

(1) 3 kW for VHF channels 2–13; and

(2) 15 kW for UHF channels 14–69.

\* \* \* \* \*

7. Amend Section 74.786 to read as follows:

\* \* \* \* \*

(g) After 11:59 pm local time on December 31, 2011, low power television and TV translator stations may no longer operate any analog (NTSC) or digital facilities above Channel 51.

8. Amend Section 74.787 to read as follows:

Section 74.787 – Digital licensing.

\* \* \* \* \*

(b) *Definitions of “major” and “minor” changes to digital low power television and television translator stations.*

(1) Applications for major changes in digital low power television and television translator stations include: (1) any change in the frequency (output channel) not related to displacement relief; (2) any change in transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station; or (3) any change in transmitting antenna location of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station’s antenna location.

(2) Other facilities changes will be considered minor.

(c) Not later than 11:59 pm local time on September 1, 2011, low power television or TV translator stations operating analog (NTSC) or digital facilities above Channel 51, that have not already done so, must file a digital displacement application for a channel below Channel 52 pursuant to the procedures in subsection (a)(4) of this rule. Low power television and TV translator stations operating analog (NTSC) or digital facilities above Channel 51 that have not submitted a digital displacement application by 11:59 pm local time on September 1, 2011 will be required to cease operations altogether by December 31, 2011. These stations’ authorization for facilities above Channel 51 shall be cancelled. Any digital displacement application submitted by a low power television or TV translator station operating analog (NTSC) or digital facilities above Channel 51 that is submitted after 11:59 pm local time on September 1,

2011 will be dismissed. In addition, any outstanding construction permit (analog or digital) for an channel above Channel 51 will be rescinded on December 31, 2011, and any pending application (analog or digital) for a channel above Channel 51 will be dismissed on December 31, 2011, if the permittee has not submitted a digital displacement application by 11:59 pm local on September 1, 2011.

\* \* \* \* \*

9. Amend Section 74.788 to read as follows:

Section 74.788 - Digital construction period.

\* \* \* \* \*

(c) Authority delegated. (1) For the September 1, 2015 digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond September 1, 2015 upon demonstration by the digital licensee or permittee that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(2) Such circumstances shall include, but shall not be limited to: (i) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; (ii) The lack of equipment necessary to obtain a digital television signal; or (iii) Where the cost of construction exceeds the station's financial resources.

(3) Applications for extension of time shall be filed not later than May 1, 2015, absent a showing of sufficient reasons for late filing.

(d) For construction deadlines occurring after September 1, 2015, the tolling provisions of Section 73.3598 shall apply.

(e) A low power television, TV translator or Class A television station that holds a construction permit for an unbuilt analog and corresponding unbuilt digital station and fails to complete construction of the analog station by the expiration date on the analog construction permit shall forfeit both the analog and digital construction permits notwithstanding a later expiration date on the digital construction permit.

(f) A low power television, TV translator or Class A television station that holds a construction permit for an unbuilt analog and corresponding unbuilt digital station and completes construction of the digital station by the expiration date on the analog construction permit, begins operating and files a license application for the digital station may forego construction of the unbuilt analog station.

10. Amend Section 74.793 to read as follows:

74.793- Digital low power TV and TV translator station protection of broadcast stations.

\* \* \* \* \*

(c) The following D/U signal strength ratio (db) shall apply to the protection of stations on the first adjacent channel. The D/U ratios for "Digital TV-into-analog TV" shall apply to the protection of Class A TV, LPTV and TV translator stations. The D/U ratios for "Digital TV-into-digital TV" shall apply to the protection of DTV, digital Class A TV, digital LPTV and digital TV translator stations. The D/U ratios correspond to the digital LPTV or TV translator station's specified out-of-channel emission mask.

	Simple Mask	Stringent Mask	Full service Mask
Digital TV-into-analog TV	10	0	Lower (-14) / Upper (-17)
Digital TV-into-digital TV	-7	-12	Lower (-28) / Upper (-26)

(d) For analysis of predicted interference from digital low power TV and TV translator stations, the relative field strength values of the antenna vertical radiation pattern if provided by the applicant will be used instead of the doubled values in Table 8 in OET Bulletin 69 up to a value of 1.0.

\* \* \* \* \*

11. Amend Section 74.794 to read as follows:

Section 74.794 - Digital emissions.

(a) (1) An applicant for a digital LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: simple, stringent or full service.

\* \* \* \* \*

(a) (2) (iii) *Full service mask*: The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Attenuation in dB =  $-11.5([\Delta]f + 3.6)$ ;

Where:  $[\Delta]f$  = frequency difference in MHz from the edge of the channel.

This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

\* \* \* \* \*

12. A new Section 74.798 is added as follows:

Section 74.798 - Digital Television Transition Notices by Broadcasters

(a) Each low power television, TV translator and Class A television station licensee or permittee must air an educational campaign about the transition from analog broadcasting to digital television (DTV).

(b) Stations that have already terminated analog service and begun operating in digital prior to effective date of this rule shall not be subject to this requirement.

(c) Stations with the technical ability to locally-originate programming must air viewer notifications at a time when the highest number of viewers is watching. Stations have the discretion as to the form of these notifications.

(d) Stations that lack the technical ability to locally-originate programming, or find that airing of viewer notifications would pose some sort of a hardship, may notify their viewers by some other reasonable means, e.g. publication of a notification in a local newspaper. Stations have discretion as to the format and time-frame of such local notification.

## APPENDIX C

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)<sup>1</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was included in the *Notice of Proposed Rulemaking (Further Notice)* in this proceeding.<sup>2</sup> Written public comments were requested on the IRFA. This present Final Regulatory Flexibility Analysis.<sup>3</sup>

**A. Need for and Objectives of the Proposed Rules**

2. In the *Second Report and Order*, the Commission adopts rules to facilitate the low power television digital transition. The Commission to the following steps as more fully described below: adopted a September 1, 2015 analog shutoff date for low power television stations; adopted a December 31, 2011 transition date for low power television stations on TV channels 52-69 (the so-called “out-of-core” channels); adopted procedures for stations that have not already completed their transition to notify the Commission of their final digital channel; made low power television permittees subject to the Commission’s ancillary and supplementary fee rules; modified the Commission’s minor change rule so that it covers a proposed change in a low power television station’s transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station’s transmitting antenna; revised the vertical antenna patterns used in the prediction methodology for the low power television services; and allowed low power television stations to use the emission mask used by full power television stations.

3. The *Second Report and Order* establishes an analog shutoff date of September 1, 2015 for low power TV, TV translator and Class A TV stations, giving these stations the flexibility of four additional years to convert to digital, *i.e.*, analog station licenses would terminate at that time and analog construction permits would have to be modified for digital operations.

4. The *Second Report and Order* established a date of December 31, 2011, by which all existing analog and digital low power television stations on channels 52-69 (the so-called “out of core” channels) must terminate operations on their out-of-core channel and requires that those stations that have not already done so must file an application for an in-core channel 2-51 by September 1, 2011.

5. The *Second Report and Order* increases to 3 kilowatts the maximum amount of power that low power stations operating on VHF channels may specify.

6. The *Second Report and Order* delegates to the Media Bureau the authority to establish timeframes and procedures for stations that have not already transitioned to notify the Commission as to their final digital channel selection.

7. The *Second Report and Order* mandates that stations with the technical ability to locally-originate programming provide some type of notification to their viewers prior to ceasing analog operations and transitioning to digital while leaving the format and timeframe for such notification to the station’s discretion.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

<sup>2</sup> See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Further Notice*, 25 FCC Rcd 13833 (2010) (*Further Notice*).

<sup>3</sup> See 5 U.S.C. § 604.

8. The *Second Report and Order* makes low power television station permittees subject to the Commission's ancillary and supplementary fee rules.

9. The *Second Report and Order* changes the Commission's minor change rule to limit transmitter site changes in minor change applications to no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's transmitting antenna.

10. The *Second Report and Order* changes the Commission's rules to allow low power television stations to use the emission mask used by full power television stations.

11. Finally, the *Second Report and Order* revises the vertical patterns used in the temporary interference prediction methodology for the low power television services that the FCC adopted in its 2004 *Digital LPTV Order*.

#### **B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

12. There were no comments received in response to the IRFA.

#### **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

13. **Television Broadcasting** The SBA defines a television broadcasting station as a small business if such station has no more than \$14.0 million in annual receipts.<sup>4</sup> Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."<sup>5</sup> The Commission has estimated the number of licensed commercial television stations to be 1,390.<sup>6</sup> According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations<sup>7</sup> in the United States have revenues of \$14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.<sup>8</sup> We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>9</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of

<sup>4</sup> See 13 C.F.R. § 121.201, NAICS Code 515120 (2007).

<sup>5</sup> *Id.* This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

<sup>6</sup> See News Release, "Broadcast Station Totals as of December 31, 2010," 2011 WL 484756 (F.C.C.) (dated Feb. 11, 2011) ("*Broadcast Station Totals*"); also available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0211/DOC-304594A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC-304594A1.pdf).

<sup>7</sup> We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra*, note 15; however, we are using BIA's estimate for purposes of this revenue comparison.

<sup>8</sup> See *Broadcast Station Totals*, *supra*, note 15.

<sup>9</sup> "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

NCE stations that would permit it to determine how many such stations would qualify as small entities.

14. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

15. ***Class A TV, LPTV, and TV translator stations.*** The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$14 million in annual receipts.<sup>10</sup>

16. Currently, there are approximately 522 licensed Class A stations, 2,191 licensed LPTV stations, 4,527 licensed TV translators, and 11 TV booster stations.<sup>11</sup> Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$14 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

17. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

18. ***Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.*** The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>12</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had

<sup>10</sup> See 13 C.F.R. § 121.201, NAICS Code 515120.

<sup>11</sup> See “Broadcast Station Totals as of December 31, 2010,” *News Release*, February 11, 2011.

<sup>12</sup> The NAICS Code for this service 334220. See 13 C.F.R. 121/201. See also [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=300&-ds\\_name=EC0731SG2&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=300&-ds_name=EC0731SG2&-lang=en)

more than 100 employees.<sup>13</sup> Thus, under this size standard, the majority of firms can be considered small.

19. **Audio and Video Equipment Manufacturing.** The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees.<sup>14</sup> Data contained in the 2007 U.S. Census indicate that 492 establishments operated in that industry for part or all of that year. In that year 374 establishments had between 1 and 19 employees; 82 had between 20 and 99 employees; and 36 had more than 100 employees. Thus, under the applicable size standard, a majority of manufacturers of audio and visual equipment may be considered small.

#### **D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements**

20. The *Second Report and Order* adopts the following new reporting requirements: (1) to require, where technically feasible, low power television services to provide notice of their upcoming digital transition to their viewers; (2) require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan; and (3) require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report. These new reporting requirements will not differently affect small entities.

#### **E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>15</sup>

22. The Commission's adoption of an analog shutoff date of September 1, 2015 will minimize impact on small entities by allowing them four additional years from the full power television transition that occurred on June 12, 2009, to complete their transition to digital. Adoption of an earlier low power transition date was rejected as it was felt that many small entities would not be ready to transition any sooner and would be forced off the air.

23. With respect to the adoption of extending all outstanding low power television station digital construction permits to September 1, 2015, this adoption will minimize the impact on small entities as it will provide them with additional time to complete construction of their digital facilities. Requiring that these outstanding construction permits expire pursuant to their original construction deadlines, prior to the September 1, 2015 low power digital transition deadline, was rejected as digital operations is not required until September 1, 2015. The Commission felt that many small entities may be forced to abandon digital construction and subsequently forced off the air should they unnecessarily be forced to complete construction prior to September 1, 2015, pursuant to their original digital construction permits.

24. The Commission's dismissal as moot of all pending low power television station digital construction permit extension applications will minimize the impact on small entities as these stations will no longer have to use resources to pursue these applications. Small entities will still receive the

<sup>13</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-\\_skip=300&-ds\\_name=EC0731SG2&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en)

<sup>14</sup> 13 CFR § 121.201, NAICS Code 334310.

<sup>15</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

benefit of an extension as all outstanding low power television station digital construction permits have been extended until September 1, 2015. The Commission rejected maintaining these extension applications as these applications are moot and would unnecessarily force small entities to expend resources to continue to pursue them.

25. With regards to the adoption of the “last minute” extensions for low power stations who demonstrate that they meet the criteria pursuant to Section 74.788(c) of the rules,<sup>16</sup> this adoption will minimize the impact on qualified small entities as these small entities will be given one last six-month extension to complete construction of their digital facilities. The Commission rejected disallowing a “last minute” extension for qualified low power stations because without the “last minute” extension, small entities may be forced to abandon construction and to go off the air due to unexpected delays in the months leading up to the September 1, 2015 transition date.

26. Concerning the Commission’s adoption of the hard deadline of May 1, 2015, after which low power stations must meet the stricter tolling criteria established in Section 73.3598 of the rules,<sup>17</sup> to apply for a “last minute” extension pursuant to the criteria set forth in Section 74.788(c) of the rules,<sup>18</sup> the Commission found that the burden on small entities is justified. The Commission determined that the burden of requiring small entities to meet the stricter tolling criteria established in Section 73.3598 of the rules<sup>19</sup> after May 1, 2015 is outweighed by the public interest in bringing the low power digital transition to a successful and timely conclusion and by the ample time low power stations will have had to complete their transition to digital..

27. With respect to requiring stations on out-of-core channels to transition at an earlier date – on December 31, 2011, the Commission found that the burden on small entities of adopting this earlier deadline is more than outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. The Commission determined that adoption of a later transition date for low power television stations on these channels would delay progress on clearing these channels.

28. With regards to requiring all out-of-core low power television stations to file a displacement application for an in-core channel by September 1, 2011, the Commission found that this deadline is necessary to meet the December 31, 2011 out-of-core digital transition deadline. Furthermore, as with the December 31, 2011 transition deadline, the burden on small entities to meet the September 1, 2011 out-of-core displacement application deadline is outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. Additionally, the Commission determined that adoption of a later out-of-core displacement application deadline would delay progress on clearing these channels.

29. The Commission adopted streamlined procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called “flash cut”) or if they intend to continue to operate their second digital channel and terminate operations on their analog channel help to prevent a significant impact on small entities. As a result of the streamlined procedures, low power stations will not be burdened with having to complete and file a lengthy progress report, as was required of full power television stations, but rather will only have to file a simple informal notification to make their final digital choice known to the Commission.

30. With respect to requiring all stations in the low power television service, which terminate their analog service after the effective date of the rule provisions in this proceeding, to notify their

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<sup>16</sup> 47 C.F.R. § 74.788(c)

<sup>17</sup> *Id.* at § 74.3598.

<sup>18</sup> *Id.* at § 74.788(c).

<sup>19</sup> *Id.* at § 74.3598.

viewers of their transition to digital operations, the Commission determined that the burden on small entities is outweighed by the public's need to be informed of individual stations' digital transitions. The Commission, however, eased the impact on small entities by giving those low power stations that locally originate programming and would be required to notify their viewers with on-air announcements, the option to notify their viewers by some other reasonable means should compliance cause financial hardship.

31. The Commission's adoption of streamlined procedures for Class A stations to choose to either "flash cut" to digital on their analog channel or to operate on their digital companion channel, while preserving their primary, protected status on the channel they chose to retain, will aid to prevent a significant impact on small entities. As a result of these streamlined procedures, Class A stations will not be burdened with filing a minor change application with the Commission to transfer their primary protected status from their analog channel to their desired digital channel.

32. With respect to subjecting low power television station permittees to the Commission's ancillary and supplementary fee rules, the Commission found that the burden on small entities of having to comply with these rules is outweighed by the need to eliminate ambiguity in the rules and to provide efficient use and administration of spectrum.

33. The Commission did not find that there would be a significant impact on small entities by its proposed change to its Commission's low power television minor change rule. The change would have little impact and any impact would affect all entities equally.

34. The Commission did not find that there would a significant impact on small entities by its decision to permit stations to use the emission mask used by full power television stations. Use would be voluntary and any impact would affect all entities equally.

35. The Commission's decision to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services would not have a significant impact on small entities. Use of the actual vertical patterns of proposed low power television facilities will simplify the engineering filings on FCC Form 346, making it easier for all applicants to complete the form, and thus saving applicants time and money. Any burden from this requirement would impact all entities equally.

#### **F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals**

36. None.

#### **G. Report to Congress**

The Commission will send a copy of the *Second Report and Order*, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>20</sup> In addition, the Commission will send a copy the *Second Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Second Report and Order* and FRFA (or summaries thereof) will be published in the Federal Register.<sup>21</sup>

<sup>20</sup> See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA, see Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

<sup>21</sup> See 5 U.S.C. § 604(b).

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, (MB Docket No. 03-185).

The clearest lesson learned from the Full Power DTV transition is the amount of preparation that is needed in advance in order to best educate the impacted citizens and to be ready to respond to the unpredictable and the unexpected. It is evident from the Second Report and Order that we are not taking the Low Power transition lightly. But it's a long road and we need to be constantly vigilant and consistently active. I am grateful that we are determining a clear path forward with sufficient time for the remaining stations to transition and that we are also beginning to form strategies for consumer outreach.

We recognize that this transition will be unique as readily a large majority of LPTVs do not originate programming and therefore may not be able to alert their viewers of an impending transition. But that does not make the alert any less essential-it makes smart planning essential. Hopefully by crafting regional strategies and implementing creative outreach efforts, coordinating with civic groups, faith centers, and utilizing local government infrastructure that proved so successful in the Full Power transition, we will minimize the disruption to the communities who rely upon LPTV. The value of LPTV is especially important to consider as decisions are made about spectrum and the benefits of having local programming that serve local needs in the future.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

Re: *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster and to Amend Rules for Digital Class A Television Stations, (MB Docket No. 03-185).*

I vote in support of this Order, which will start the process to bring the DTV transition to a close by establishing procedures and a September 1, 2015 deadline for low power television stations to transition to digital signals. The Order also requires all low power television stations located in channels 52 to 69, also known as the 700 MHz band, to either relocate to television channels below Channel 52 or cease operations by December 31, 2011. The relocation of these stations will clear the 700 MHz band allowing for the successful deployment of wireless services by commercial wireless providers and public safety entities.

Our action today promotes a well-established Commission goal of putting the nation's spectrum resources to the most efficient and productive use. I remain mindful, however, of the significant benefits delivered by low power television to local communities, especially throughout rural America. For this reason, we must ensure that this digital transition is implemented as smoothly as possible, building upon the lessons learned from the DTV transition. I am pleased to see that many of the rules and procedures implemented in this Order include improvements based upon the wealth and breadth of experience gained by the committed FCC staff during the full power digital transition. It should always be our goal to improve our processes and strive to do better.

The one thing I learned from my involvement with the full power DTV transition is to expect the unexpected. As was the case with the first digital transition, unanticipated challenges are bound to arise. Although our past experiences may be useful in mitigating such surprises, there are significant differences in scope between the digital transition of full power and low power television stations. In this light, I do have some concerns about the Commission's representations regarding possible consumer outreach efforts, such as third-party and expanded FCC call centers, walk-in DTV help centers, and staff contact with local communities. Although we do not "decide on the exact form and extent of our consumer education," consumers and policymakers alike should be made aware that we may not have at our disposal the same private sector resources and funding for consumer education that was available for the first digital transition. We therefore must be careful to not raise undue expectations regarding potential outreach efforts. Furthermore, we should manage our available assets prudently to ensure that we are able to provide assistance to those areas that are most dependent on low power television and most likely to be affected.

I thank the Media Bureau for their work on this Order and the hard work that is yet to be done as we prepare to embark on what will hopefully be a seamless and successful digital transition.