



WASHINGTON, DC

February 25, 2009

**FCC Issues Report and Order to Further Implement DTV Delay Act;
Announces Abbreviated Comment Period For Additional DTV Transition Issues**

Implementation of DTV Delay Act

The FCC has issued a *Second Report and Order and Notice of Proposed Rulemaking* to further implement the DTV Delay Act, which delayed the national digital television transition from February 17, 2009 to June 12, 2009. The FCC adopted the following procedures regarding the DTV transition:

- The FCC's DTV Consumer Education Initiative requirements, including reporting requirements, that would have expired March 31, 2009, will continue to be in effect until June 30, 2009;
- Stations that elected Option One must continue to provide viewers with three PSAs and three crawls in each quarter of each broadcast day (with at least one between 8:00 – 11:00 PM in the Eastern and Pacific time zones and between 7:00 – 10:00 PM in the Mountain and Central time zones) through June 30, 2009, and must revise the guidance text that is used for on-air notices to reflect that the transition deadline has been extended, and that many stations will transition or have transitioned prior to that date. The FCC has suggested the following text:

The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but your local television stations may switch sooner. After the switch, analog-only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products;

- Stations that elected Option Two must continue to broadcast the required PSAs and crawls, snipes, or tickers, and tentatively must begin a new 100-day countdown to the transition on March 4, 2009. The graphic must air at least once daily, and must provide the number of days remaining until the transition and a website or phone number viewers can call for more information;



- Stations that elected Option Three must continue to provide viewers with three minutes of education daily, with 22.5 minutes a month in prime time, through June 30, 2009;
- Form 388 must be filed quarterly, posted online and placed in the station's public file up to and including the quarter in which a station concludes its education campaign;
- The FCC will establish final analog service termination procedures no later than March 13, 2009;
- All stations must file a binding notice with the FCC by March 17, 2009 of the date they will terminate analog television service. Any station that fails to file a notice by March 17, 2009 will be assumed to be terminating analog service on June 12, 2009;
- The FCC has tentatively determined that stations may not terminate analog service prior to April 16, 2009 and that stations wishing to terminate analog service on or after April 16, 2009, but before June 12, 2009, must provide at least 30 days advance notice to the FCC. The FCC has also tentatively concluded that affiliates of the four major networks will be required to make additional certifications regarding continued analog service to significant portions of their audience and other public interest conditions. Notices to terminate prior to June 12, 2009 must be filed after the FCC finalizes and releases final analog service termination procedures, but before March 17, 2009;
- All full power stations must update their DTV Transition Status Reports, FCC Form 387, no later than April 16, 2009 to reflect their transition plans as a result of the delay in the nationwide transition date;
- The 30 day period applicable to the Analog Nightlight program will begin on June 13th and run through July 12, 2009. The FCC will review the list of stations eligible to participate in the Analog Nightlight program as it gets closer to the June 12th transition date.



Comments Requested

In its *Notice of Proposed Rulemaking*, the FCC has requested comments, in an expedited, one-round, five day cycle, on possible additional amendments to its rules in order to carry out the DTV Delay Act, including:

- Analog service termination requirements for stations still operating in analog;
- Revisions to the DTV consumer education rules, including a requirement that broadcasters notify viewers of predicted service loss;
- Possible revision to the DTV consumer education responsibilities of stations that elected either Option Two or Option Three, including whether such stations should be required to broadcast an up-to-date 30 minute informational video;
- Whether stations that participate in the post-transition analog nightlight program should be exempt from post-transition consumer education requirements.

We will continue to monitor developments in this area and update you with additional client memos as details become available. In the meantime, should you have any questions regarding the DTV transition, please contact an attorney in our office.

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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