



WASHINGTON, DC

February 27, 2009

Comments In DTV Delay Act Proceeding Due March 4, 2009

Recently, we informed you that the FCC has requested comments, in an expedited, one-round, five-day cycle, on possible amendments to its rules in order to implement the DTV Delay Act. The deadline for filing comments is March 4, 2009.

The FCC has reached the following tentative conclusions about how to implement the DTV Delay Act on which it seeks comments:

- Full power stations must, no later than March 17, 2009, notify the FCC of the date on which they will terminate analog service. Such termination date may not be prior to April 16, 2009. Stations will not be permitted to change the date they elect except in the case of equipment failure, natural disaster or other unforeseeable emergency;
- On air notifications of early analog termination must include the station's termination date and, for stations terminating analog service on June 12, 2009, but prior to 11:59:59 pm local time, the time of day that analog service will terminate;
- If a major network affiliate intends to terminate analog service prior to June 12, 2009, it must certify that (i) at least 90% of the viewers within the station's analog Grade B contour will receive full analog service or enhanced analog nighttime service until June 12, 2009 (and must provide a list of the stations that will provide such analog service), and (ii) it will comply with "other public interest conditions" (as described below) on or before the day it terminates analog service and through June 12, 2009. Stations that cannot make the requisite certification will have a high burden to prove that extraordinary, exigent circumstances, such as the unavoidable loss of their analog site or extreme economic hardship, require that they terminate their analog service on a date prior to June 12th;
- "Other Public Interest Conditions" of network affiliates terminating prior to June 12, 2009 include:
 - Ensuring that at least one station that is currently providing analog service to an area within the DMA that will no longer receive analog service after the early termination will continue broadcasting an analog signal providing at least DTV transition and emergency information, local news and public affairs programming for 60 days following the early termination date but not beyond June 12, 2009;



- Ensuring that enhanced nighttime service concerning the DTV transition will be provided in Spanish and English and that both DTV transition and emergency information is accessible to the disabled community;
- Providing, either alone or in cooperation with other stations in the market, a consumer “walk in” center to assist consumers with applying for coupons and obtaining converter boxes, demonstrating how to install converter boxes, and related matters; and
- Ensuring that on-air educational information (prior to the early termination date and thereafter as part of enhanced nighttime service), will include demonstrations of converter box installations, antenna setups and other information, including the location of walk-in centers in the market and the phone number for assistance provided to the market;
- Ensuring that DTV educational information will describe areas that may be losing over the air signal coverage as the station transitions to digital only broadcasting, including maps, listings of affected communities, and instructions on how to assess what type of antenna may be necessary to retain the station’s digital signal;
- Each station individually or collectively in the market providing local or toll free telephone assistance, including engineering support;
- Broadcasting a crawl on the station’s analog channel regarding the station’s termination of analog service for the seven day period prior to the date of early termination. For the first five days, the crawl must run for 5 minutes of every hour, and for the final two days, the crawl must be aired for 10 minutes of every hour. The crawl must include the FCC toll free number 1-888-CALLFCC.

In addition, the FCC seeks comment on the following open issues:

- Whether to require viewer notification periods of longer than the prescribed 30 days, up to 60 days when possible, or if notifications should commence uniformly on a date certain or as soon as the station’s intended date of analog termination date is finalized;
- Whether to require all stations that are terminating analog service prior to June 12, 2009 to air a crawl for the seven days prior to their termination;
- Whether stations should be allowed to terminate analog service at any time on June 12, 2009, or be required to continue broadcasting until 11:59:59 pm local time;



- Whether, and how, to revise the requirement that Option Two broadcasters air a daily countdown of the number of days until the conclusion of the DTV transition, beginning 100 days prior to the transition;
- Whether stations that elected either Option Two or Option Three of the DTV Consumer Education Initiative requirements must, on at least one day prior to June 12, 2009, air an updated 30 minute informational video on the DTV transition, and whether this video should explain the change of the transition date to June 12th, when that particular station is transitioning, when other stations in the market are transitioning, and/or any change in the coverage area of the station;
- Whether Option Two and Option Three stations should air PSAs to inform their viewers if 2 percent or more of their analog viewers are predicted to lose service as a result of a change in their geographic coverage area, and whether such stations should be required to provide coverage loss information by direct mail to addresses in the affected area; and
- Whether to waive the post-transition consumer education requirements for stations that participate in the analog nightlight program.

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Given the March 4, 2009 comment deadline, please contact us immediately if you would like to participate in this proceeding. 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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