



PUBLIC NOTICE

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Third DTV Periodic Report and Order Published in Federal Register Today

FCC Forms 301 and 340 Now Available for Filing for Post-Transition CP Applications FCC Form 387, Transition Status Report, Available and Due February 19, 2008 Expedited Processing of CP Applications Available Until March 17

1. By this Public Notice, the Media Bureau announces that the Report and Order in the Third DTV Periodic Review proceeding¹ was published in the Federal Register today, January 30, 2008.² Pursuant to the Ordering Clause³, the rules, forms and procedures adopted in the *Third DTV Periodic Report and Order* are now in effect, except those that contain information collection requirements subject to the Paperwork Reduction Act of 1995 (“PRA”)⁴ that have not yet received approval by the Office of Management and Budget (“OMB”).⁵

2. The Commission received OMB approval on January 7, 2008 for the following forms, which are now available for filing by full-power television broadcast stations:⁶

- FCC Form 301, the form for commercial stations to file applications to construct or modify their post-transition (DTV Table Appendix B) facilities.⁷

¹ *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Report and Order, FCC 07-228 (rel. Dec. 31, 2007) (“*Third DTV Periodic Report and Order*”).

² *Third DTV Periodic Report and Order*, 73 Fed. Reg. 5633 (Jan. 30, 2008).

³ See *Third DTV Periodic Report and Order*, *supra* note 1, at ¶ 210; revised by “Second Erratum,” FCC 07-228 (MB rel. Jan. 23, 2008) (corrections incorporated into *Third DTV Periodic Report and Order*).

⁴ See 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.).

⁵ See *Third DTV Periodic Report and Order*, *supra* note 1, at ¶¶ 205 and 210. The rules, forms and procedures that received OMB approval prior to publication of the summary of the Report and Order in the Federal Register are now in effect. We note that 47 C.F.R. § 73.682(d), which is one of the rules subject to OMB approval, will take effect no earlier than May 29, 2008. See *Third DTV Periodic Report and Order*, *supra* note 1, at ¶ 185.

⁶ See OMB Control Nos. 3060-0027 (Form 301), 3060-0407 (Form 337), 3060-0029 (Form 340) and 3060-1105 (Form 387).

⁷ The details of each station’s channel assignment, including technical facilities and predicted service and interference information, are set forth in the DTV Table Appendix B. See 47 C.F.R. § 73.622(i), which codifies the post-transition DTV Table. See also *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, 22 FCC Rcd 15581 (2007) (“*Seventh Report and Order*” and “*Eighth Further Notice*”).

- FCC Form 337, the form for stations to file requests for an extension of time to construct DTV facilities.
- FCC Form 340, the form for noncommercial educational (NCE) stations to file applications to construct or modify their post-transition (DTV Table Appendix B) facilities.
- FCC Form 387, the form for stations to file their DTV Transition Status Reports.

We will issue additional public notices when the remaining rules, forms and procedures described in paragraph 205 of the *Third DTV Periodic Report and Order*, which contain information collection requirements, receive OMB approval and become effective.

A. FCC Forms 301 and 340: Applications to Construct or Modify Post-Transition (DTV Table Appendix B) Facilities

3. Each station has the responsibility to ensure that it can begin operations on its post-transition channel upon expiration of the deadline for the transition on February 17, 2009 or earlier, as specified in the *Third DTV Periodic Report and Order*.⁸ In order to continue broadcasting after the transition date, each station must have, or have filed for, a license for its authorized post-transition facilities. Stations that need to construct their authorized post-transition facilities, or that need to modify their existing facilities to comply with the post-transition DTV Table Appendix B facilities, should file a CP application now. Commercial stations must use FCC Form 301, while noncommercial educational (NCE) stations must use FCC Form 340. Stations that have completed construction and have begun operating pursuant to program test authority must file FCC Form 302-DTV, an application for a license to cover.⁹

4. Expedited Processing. Stations that want to take advantage of "expedited processing" must file by March 17.¹⁰ We remind stations, however, that expedited processing does not necessarily mean that the application will be granted. Applications that receive expedited review but that are not readily grantable by the Commission will require further action by the station.

5. Filing Deadlines. We establish the following filing deadlines for stations to file their post-transition CP applications:¹¹

⁸ Some stations whose post-transition channel is the same as their pre-transition DTV channel were given an earlier construction deadline of either May 18, 2008 or August 18, 2008. See 47 C.F.R. § 73.624(d)(1)(v)-(vi); see also *Third DTV Periodic Report and Order*, *supra* note 1, at Section V.B.2.

⁹ See 47 C.F.R. § 73.3536. FCC Form 302-DTV was not changed by the *Third DTV Periodic Report and Order* and remains available for filing. Stations may also make certain minor changes to licensed facilities pursuant to 47 C.F.R. § 73.1690.

¹⁰ In the *Third DTV Periodic Report and Order*, the Commission established expedited processing for stations whose application meets all three of the following requirements: (1) The application does not seek to expand the station's facilities beyond its final post-transition DTV Table Appendix B facilities; (2) The application specifies facilities that match or closely approximate the DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that are no more than five percent smaller than its facility specified in Appendix B facilities with respect to predicted population); and (3) The application is filed on or before March 17, 2008. (The Commission set an application filing deadline for expedited processing of 45 days after the effective date of the *Report and Order*.) *Third DTV Periodic Report and Order*, *supra* note 1, at ¶ 141.

¹¹ The Media Bureau was granted delegated authority to establish filing deadlines for the forms adopted in the *Third DTV Periodic Report and Order*. See *Third DTV Periodic Report and Order*, *supra* note 1, at ¶ 211.

- Stations with a construction deadline of August 18, 2008 must file no later than March 17, 2008.¹²
- Stations with a construction deadline of February 17, 2009 must file no later than June 19, 2008.¹³

Although we establish these filing deadlines to ensure that stations meet their construction deadlines, we encourage stations to file their CP applications earlier in order to have the maximum time to order equipment and build their post-transition facilities.

6. Freeze On Maximizations Remains In Effect. We remind stations that CP applications filed at this time must not request an expansion of service area that would violate the filing freeze.¹⁴ We will announce later when we will lift the filing freeze and begin accepting stations' applications to maximize post-transition facilities and serve more viewers.¹⁵

1. Stations Whose Post-Transition Channel is Different From Their Pre-Transition DTV Channel Must File a CP Application

7. Stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations, must file applications for a CP on their final, post-transition channel. Stations that apply for facilities that match (or are no more than five percent smaller than) those specified in the post-transition DTV Table Appendix B may qualify for expedited processing of their CP applications.¹⁶

8. Such stations that are applying for facilities that do not precisely match those specified in the post-transition DTV Table Appendix B may benefit from the filing freeze waiver policy offered in the *Third DTV Periodic Report and Order*.¹⁷ Stations that have a pending petition for reconsideration of the

¹² The Commission established August 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but which do not have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. See 47 C.F.R. § 73.624(d)(1)(vi).

¹³ The Commission established February 17, 2009 for stations building digital facilities based on a new channel allotment in the post-transition DTV Table and for stations facing a unique technical challenge, such as the need to reposition a side-mounted antenna, that prevents them from completing construction of their final DTV facilities before turning off their analog transmission. See 47 C.F.R. § 73.624(d)(1)(vii).

¹⁴ On August 3, 2004, the Media Bureau announced a freeze on the filing of certain requests for allotment or service area changes. See Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810, 14810-11 (MB 2004) ("*August 2004 Filing Freeze PN*"). The freeze, which was imposed prior to the commencement of the channel election process, precludes parties from filing the following items: (i) petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. The freeze does not prevent the processing of pending applications. See *id.* See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

¹⁵ See *Third DTV Periodic Report and Order*, *supra* note 1, at ¶¶ 148 and 153. The Commission has tentatively established August 17, 2008 as the date we will lift the freeze, provided we have completed processing stations' applications to build their post-transition facilities. *Id.*

¹⁶ See, *supra*, note 10.

¹⁷ In the *Third DTV Periodic Report and Order*, the Commission established a waiver policy to permit rapid approval of minor expansion applications that are necessary to serve existing viewers and filed by stations that are not using their pre-transition DTV channel for post-transition operation. Stations must demonstrate that such expansion: (1) Would allow the station to use its analog antenna or a new antenna to avoid a significant reduction in post-transition service from its analog service area; (2) Would be no more than five miles larger in any direction (continued...)

*Seventh Report and Order*¹⁸ may file their CP applications for post-transition facilities now and are encouraged to do so if they can obtain their desired post-transition facilities under the filing freeze waiver policy. Applications that contemplate such deviations do not qualify for expedited processing.¹⁹

2. Stations Whose Post-Transition Channel is the Same as Their Pre-Transition DTV Channel Should File Now

9. Stations that will use their pre-transition DTV channel for post-transition operations and that do not have a licensed DTV facility or CP to construct a facility that matches the facilities defined in the post-transition DTV Table Appendix B must file an application to modify their authority on their current DTV channel. However, stations that have a license or CP to construct the facility that they intend to operate after the transition date do not need to file a CP application. Instead, such stations should report in their FCC Form 387, DTV Transition Status Report, that they intends to use their existing licensed facility or CP and not the facility in Appendix B.²⁰

10. There are some stations that already have a license to operate, or a CP to construct, their post-transition channel that matches the facility defined for them in the post-transition DTV Table Appendix B. These stations do not need to file any additional CP applications.²¹ These stations are building their post-transition facilities on the CPs granted for pre-transition operation.

B. FCC Form 337: Application for Extension of Time to Construct a Digital Television Broadcast Station

11. Stations that need to apply for an extension of time to construct post-transition facilities must use FCC Form 337. Extension requests will be evaluated under the stricter standard in revised Section 73.624(d)(3) of the rules.²² Section 73.624(d)(3) is now in effect and will be applied to all pending and future requests for extension of construction deadlines occurring on or before February 17,

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than their authorized service area, as defined by the post-transition DTV Table Appendix B; and (3) Would not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations. *Third DTV Periodic Report and Order*, *supra* note 1, at ¶ 151.

¹⁸ Approximately 123 petitions for reconsideration of the *Seventh Report and Order* were filed by October 26, 2007, the close of the pleading cycle. See MB Docket No. 87-268. See also Public Notice, “Petitions for Reconsideration of Action in Rulemaking Proceeding,” MB Docket No. 87-268, 72 Fed. Reg. 59533 (MB 2007) (“*First PN of Petitions for Reconsideration of Seventh Report and Order*”); Public Notice, “Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding,” MB Docket No. 87-268, 72 Fed. Reg. 64628 (MB 2007) (“*Second PN of Petitions for Reconsideration of Seventh Report and Order*”); Public Notice, “Petition for Reconsideration of Action in Rulemaking Proceeding,” MB Docket No. 87-268, 72 Fed. Reg. 17688 (MB 2007) (“*Third PN of Petitions for Reconsideration of Seventh Report and Order*”). The Commission will address these petitions in a separate proceeding.

¹⁹ We note, however, that stations which successfully change their Appendix B facilities (through their pending petition for reconsideration) to match their desired post-transition facilities may at that time qualify for expedited processing of their CP applications.

²⁰ On the Form 387, the station must list the FCC file number that the station is relying upon as the relevant authorization for post-transition operations. In this situation, the station must also indicate if it (1) holds an unbuilt CP for, (2) has completed construction of, or (3) is now operating on, its final, post-transition DTV facility. The station must attach an Exhibit to the Form 387 explaining that it intends to use its existing licensed facility or CP and not the facility set forth for it in Appendix B.

²¹ As noted above, stations that have completed construction and begun operating pursuant to program test authority must file an application for a license to cover (FCC Form 302-DTV); see 47 C.F.R. § 73.3536.

²² See 47 C.F.R. § 73.624(d)(3). The revised rule was adopted in the *Third DTV Periodic Report and Order*, *supra* note 1, at Section V.B.5.

2009.²³

12. Extension requests pursuant to Section 73.624(d)(3) must be filed no earlier than 90 days, and no later than 60 days, before the relevant construction deadline.²⁴ Thus, for example, stations with a May 18, 2008 construction deadline²⁵ must file their extension request no later than March 19 and stations with an August 18, 2008 construction deadline²⁶ must file their extension request no later than June 19,²⁷ absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.²⁸

C. FCC Form 387: DTV Transition Status Reports Due February 19 and Again on October 20 if Final Facility Not Completed

13. Stations must file their DTV Transition Status Reports using FCC Form 387 on or before February 19, 2008.²⁹ In addition, stations must update these forms as events warrant and, by October 20, 2008, if they have not by that date reported the completion of their transition, *i.e.*, that they have begun operating their full facility as authorized by the post-transition DTV Table Appendix B. Stations must provide the specific details of their current transition status, any additional steps necessary for digital-only operation upon expiration of the February 17, 2009 transition deadline, and a timeline for making those steps.³⁰

14. In addition, stations must use FCC Form 387 to notify the Commission about the construction deadlines for which they qualify. For example, stations claiming February 17, 2009 as their construction deadline because of a “unique technical challenge” (as defined in the *Third DTV Periodic Report and Order*) must specify such status in their Form 387.³¹ As discussed above, stations whose license or CP for post-transition facilities does not match those facilities defined for them in the post-transition DTV Table Appendix B must also use the Form 387 to notify the Commission of the discrepancy.³²

²³ 47 C.F.R. § 73.624(d)(3).

²⁴ *Id.* at § 73.624(d)(3)(v).

²⁵ The Commission established May 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. *See* 47 C.F.R. § 73.624(d)(1)(v).

²⁶ *See, supra*, note 13.

²⁷ The Commission established May 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. The Commission established August 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but which do not have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. *See Third DTV Periodic Report and Order, supra* note 1, at Section V.B.2.

²⁸ *See* 47 C.F.R. § 73.624(d)(3)(v). We will accept extension requests filed less than 60 days before the applicable construction deadline only if the station affirmatively and persuasively demonstrates that the extension is necessary due to an unforeseen development or event occurring within the 60 day timeframe. *See Third DTV Periodic Report and Order, supra* note 1, at ¶ 79.

²⁹ We are extending the filing deadline by one day because February 18, 2009 is a federal holiday.

³⁰ *See Third DTV Periodic Report and Order, supra* note 1, at ¶¶ 34-35.

³¹ *See id.* at ¶ 53.

³² *See, supra*, note 21.

D. Electronic Filing Required

15. FCC Forms 301, 302-DTV, 337, 340 and 387 must be filed electronically using the Commission's Consolidated Database System ("CDBS") Electronic Filing System via the Internet from the Media Bureau's Web site at: <http://www.fcc.gov/mb/cdbs.html> or http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm.

E. Additional Information

16. For more information, contact the Media Bureau's Video Division: Nazifa Sawez, nazifa.sawez@fcc.gov, at (202) 418-7059, or Kevin Harding, kevin.harding@fcc.gov, at (202) 418-7077. TTY: (202) 418-7172.

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