



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

FCC 09-6
February 5, 2009

FCC Announces Procedures Regarding Termination of Analog Television Service

On or After February 17, 2009

Termination Notifications for February 17, 2009 Must Be Filed By Monday, February 9

The Federal Communications Commission is issuing this Public Notice to announce the procedures that full-power television broadcast stations must follow if they wish to terminate their analog television broadcast service on or after February 17, 2009 – the previous deadline for the digital television (“DTV”) transition established by the Digital Television and Public Safety Act of 2005 (“DTV Act”)¹ — in the event that the extension of the deadline is enacted into law. Yesterday, the United States Congress passed legislation, known as the “DTV Delay Act,” that would extend the date for the completion of the DTV transition from February 17, 2009, to June 12, 2009.² Congress extended the transition date in order to permit analog service to continue until consumers have had additional time to prepare. But we also recognize that Congress directed the Commission to provide flexibility for stations wanting to transition prior to the new date. Stations may have made extensive preparations for a February 17 digital transition and some may have difficulty altering their commitments at this time. The Commission’s challenge is to provide opportunities for some stations to end analog broadcasting early without sacrificing the goal of giving consumers additional time to prepare. Accordingly, and in light of the fact that the previous February 17 deadline is less than two weeks away, the Commission finds it appropriate to announce immediately through this Public Notice the procedures that stations must follow if they wish to terminate their analog service on February 17, 2009, notwithstanding extension of the nationwide DTV transition deadline to June 12.

The *Third DTV Periodic Report and Order* established flexibility for broadcasters to reduce or terminate their stations’ analog service prior to the previous February 17, 2009 transition deadline,³ while at the same time requiring broadcasters to both maintain the best

¹ 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)).

² See DTV Delay Act, S. 352, 111th Cong. (January 29, 2009). The DTV Delay Act, passed by the United States Senate on January 29, 2009, was adopted by the United States House of Representatives yesterday and is being sent to the President for his signature to be enacted into law.

³ See *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Report and Order, 23 FCC Rcd 2994, 3041-58, ¶¶ 98-134 (Section V.C.) (2007) (“*Third DTV Periodic Report and Order*”). Under those procedures, early termination is permitted with prior FCC approval (continued on the next page)_____

possible television service to the public during the transition period and meet viewers' over-the-air reception expectations after the transition date through compliance with viewer notification requirements.⁴ The *Third DTV Periodic Report and Order*, however, did not specifically contemplate the circumstances of a delay in the DTV deadline. The DTV Delay Act expressly permits television stations to terminate their analog service prior to the new deadline, "so long as such prior termination is conducted in accordance with the Federal Communications Commission's requirements in effect on the date of enactment of this Act, including the flexible procedures established in the [*Third DTV Periodic Report and Order*]." ⁵ Furthermore, the DTV Delay Act directs the Commission, "[n]otwithstanding any other provision of law," to take all actions necessary to implement its provisions.⁶ If the DTV Delay Act is enacted into law, then stations that wish to terminate analog service on February 17, 2009 will be subject to the *Third DTV Periodic Report and Order's* requirement for prior FCC approval and the 60-day viewer notification requirement, as the Act's language allows termination prior to the new June 12, 2009 transition date in accordance with the *Third DTV Periodic Report and Order's* procedures, and the new transition date will be more than 90 days away.⁷

We conclude, however, that partial waiver of these requirements is justified for stations already planning to terminate analog service on February 17, 2009. As stated above, the

(continued from previous page)_____

more than 90 days in advance of the transition deadline if a station (1) demonstrates that its analog service termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and (2) notifies viewers on its analog channel about the planned service termination and informs them about how they can continue to receive the station at least four times a day for a period of 60 days prior to termination. *Id.* at 3050, ¶ 117. *See id.* at 3049, ¶ 114. Early termination also is permitted without prior FCC approval within 90 days of the transition date (subject to a 30-day viewer notice requirement), or within 30 days of the transition date pursuant to section 73.1615 of the Commission's rules, 47 C.F.R. § 73.1615, in which case the viewer notifications must occur "for the 30 days prior to the planned permanent service reduction or termination." *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3044, ¶ 106. *See id.* at 3058, ¶ 134.

⁴ *Id.* at 2996, ¶ 2.

⁵ DTV Delay Act, § 4(a) ("PERMISSIVE EARLY TERMINATION UNDER EXISTING REQUIREMENTS.— Nothing in this Act is intended to prevent a licensee of a television broadcast station from terminating the broadcasting of such station's analog television signal (and continuing to broadcast exclusively in the digital television service) prior to the date established by law under section 3002(b) of the Digital Television Transition and Public Safety Act of 2005 for termination of all licenses for full-power television stations in the analog television service (as amended by section 2 of this Act) so long as such prior termination is conducted in accordance with the Federal Communications Commission's requirements in effect on the date of enactment of this Act, including the flexible procedures established in the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (FCC 07–228, MB Docket No. 07–91, released December 31, 2007)").

⁶ DTV Delay Act, § 4(c) ("Notwithstanding any other provision of law, the Federal Communications Commission ... shall, not later than 30 days after the date of enactment of this Act, each adopt or revise its rules, regulations, or orders or take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act and the amendments made by this Act."). *See also* DTV Act § 3002(b), which directs the Commission to "take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive)." 47 U.S.C.A. § 309 Note.

⁷ DTV Delay Act § 4(a). *See, supra*, note 5.

Commission did not anticipate delay of the statutory deadline at the time that it adopted these requirements, and compliance with them by February 17 now would be impossible, both because February 17 is less than two weeks away and because, as a practical matter, the Commission could not process stations' individual showings within that time period. Furthermore, stations lacked notice 60 days in advance of February 17 that they would be required to notify the Commission and/or viewers of plans to terminate analog service "early" on February 17. We find that grant of a partial waiver for stations that terminate analog service on February 17 (in anticipation that the DTV Delay Act is enacted into law) is consistent with the DTV Delay Act's direction that the Commission, "[n]otwithstanding any other provision of law," take all actions necessary to implement its provisions, as well as the *Third DTV Periodic Report and Order's* goal of providing flexibility to stations in order to facilitate the digital transition.⁸ For the same reasons, we conclude that partial waiver of the *Third DTV Periodic Report and Order* requirement that stations seek STA approval for early termination at least 90 days in advance is justified.⁹ Accordingly, in anticipation that the DTV Delay Act is enacted into law, we waive in part the *Third DTV Periodic Report and Order* requirements of prior Commission approval, 60 days of viewer notification and 90-day advance notification to the Commission for stations that want to terminate analog service on February 17, 2009, subject to the conditions set forth below. Stations are not required to submit pleadings or engineering in support of a waiver request; rather, this Public Notice will operate as a waiver. No express grant of the waiver is required.

Consistent with our public interest responsibilities and Congress' delay of the transition to June 12 to give consumers additional time to prepare, the Commission reserves the right to limit or reconsider this partial waiver in the event that it determines that analog termination on February 17 by a station or group of stations is contrary to the public interest. In such event, the Commission will promptly notify the affected station or stations.¹⁰ The Commission may consider such action if, for example, we find that all or most of the stations in a market will terminate their analog service on February 17, and that the market is one in which many viewers

⁸ See *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3048, ¶ 13; DTV Delay Act § 4(a) (referencing the *Third DTV Periodic Report and Order's* "flexible procedures"). To the extent that the procedures announced herein would trigger Paperwork Reduction Act (PRA) requirements, 44 U.S.C. § 3501, *et seq.*, we conclude that they will be exempt pursuant to section 4(a) of the DTV Delay Act, which provides that, "[n]otwithstanding any other provision of law," the Commission must "adopt or revise its rules, regulations, or orders or take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act and the amendment made by this Act" within 30 days of the date of enactment. DTV Delay Act, § 4(a). The "notwithstanding" clause plainly excuses compliance with any legal requirement that would prevent fulfillment of Congress's mandate to extend the nationwide DTV transition. In other contexts, the D.C. Circuit has interpreted like "notwithstanding" language "to supersede all other laws, stating that '[a] clearer statement is difficult to imagine.'" *Liberty Maritime Corp. v. United States*, 928 F.2d 413, 416 (D.C. Cir. 1991) (internal cites omitted). The regular clearance process for information collections subject to PRA approval takes 120 days, *see* 5 CFR § 1302.12, and even emergency clearance requests can take a number of days to process. For the reasons discussed above, with February 17, 2009 less than two weeks away, it is imperative to announce the procedures herein immediately — even before the nationwide DTV deadline extension is enacted into law — in order to carry out the purposes of the DTV Delay Act. As the PRA's requirements cannot be reconciled with the statutory mandate under these unique circumstances, we conclude that the procedures announced herein are exempt from the PRA. This exemption, like the procedures announced herein, applies only if the DTV Delay Act extends the nationwide DTV transition deadline.

⁹ *Id.* at 3045, ¶ 107.

¹⁰ 47 C.F.R. § 1.108.

are unprepared for the transition or at risk if the transition proceeds. In such case, we may require affected stations to submit additional information to explain and justify how their early termination advances the public interest. Such additional information can include significant economic, technical, contractual and other business reasons that support termination on February 17. The Commission will scrutinize such information closely in light of the important interests at stake to determine whether a compelling case has been made.

As a condition of the partial waiver of the early termination procedures set forth in the *Third DTV Periodic Report and Order* that we are granting herein, we will require stations that wish to terminate their analog signal transmission on February 17, 2009 to provide notice to the Commission, the public, and their viewers. Stations must notify the Commission no later than Monday, February 9, 2009 (11:59 p.m. EST), of their intention to terminate analog service on February 17,¹¹ and must also update their Transition Status Reports (Form 387). In light of the short time before February 17, we find this amount of time for stations to file notifications is reasonable. As discussed *infra*, as a condition of the waiver discussed herein, stations that have already notified the Commission about their intention to terminate on February 17 must, nonetheless, again notify the Commission confirming their intent to terminate on that date and their performance of the required viewer notifications. The short deadline for notification to the Commission is necessary to enable the Commission to evaluate and adjust deployment of its resources, and to coordinate with other entities, in advance of February 17 in order to prepare for analog service terminations on that date and protect the public interest. The Commission must make and adjust arrangements for consumer outreach, call center staffing, converter installation assistance and coordinate with contractors, partners, volunteers, and organizations throughout the country to address areas where many or most stations will terminate their analog signals on February 17, 2009. We also note that stations have had ample time during Congressional review of the legislation to consider whether to go forward with their analog termination on February 17, 2009. To protect viewer expectations and to carry out the purpose of the *Third DTV Periodic* procedures, these stations must also broadcast, prior to termination, the equivalent of 30 days worth of “viewer notifications,” regarding the station’s intention to terminate its analog service on February 17, 2009, despite the delay in the nationwide deadline.¹² These viewer notifications

¹¹ Notice to the Commission must be provided electronically through the Commission’s Consolidated Database System (“CDBS”) using the Informal Application filing form. To access the CDBS electronic filing system in order to file an analog service termination notification, go to the Media Bureau’s web site at: <http://www.fcc.gov/mb/cdbs.html>. Instructions as to how to file these notifications are as follows: After logging into the CDBS, select the last option from main menu “Additional non-form Filings.” From the next menu select “Silent STA/Notification of Suspension.” From the pre-form menu select: “Notification of termination of analog service by February 17, 2009.” No fee is required. For additional information, contact Hossein Hashemzadeh, Hossein.Hashemzadeh@fcc.gov, of the Media Bureau, Video Division, at (202) 418-1658.

¹² The *Third DTV Periodic Report and Order* required stations terminating analog service within the 90-day period prior to the transition date to air viewer notifications on their analog channel at least four times a day, including at least once in primetime, for at least 30 days prior to the date of their early termination. *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3058, ¶¶ 133-134. See also *id* at 3044-45, ¶ 106 (regarding termination within 30 days of the transition date via Section 73.1615 notification). Pursuant to the *Third DTV Periodic Report and Order*, notifications must be aired 120 times, on a daily basis, including 30 times in primetime, distributed evenly during the 30-day period. Therefore, if the viewer notifications begin, for example, 8 days before the station’s termination on February 17, the station must broadcast notifications 120 times, including 30 times in primetime, distributed evenly during the 8-day period; *i.e.*, the station must broadcast notifications every day on-air at least 15 times a day, including at least 3.75 times in primetime (*i.e.*, four times a day for six of the eight days and three times a day for the other two days), for the 8-day period.

must include the information as required in the *Third DTV Periodic Report and Order*.¹³ While we recognize that stations have been notifying viewers about the February 17, 2009 date for the past year,¹⁴ with the delay in the nationwide deadline, extra efforts are needed to avoid viewer confusion. To comply with the viewer notification requirements, stations must utilize a combination of public service announcements (PSAs) and crawls, if technically feasible, to adequately and clearly communicate the required information, and to make particular note that the date the station is terminating is prior to the new nationwide date of June 12, 2009. In addition to the viewer notifications required by the *Third DTV Periodic Report and Order*, stations terminating on February 17 are required, as a condition of the waiver and if technically feasible, to broadcast a crawl on their analog channel regarding the station's termination of analog service, for the seven day period from February 10 (11:59 p.m. EST) through the termination of the station's analog signal on February 17 (11:59 p.m. EST). For the first five days, *i.e.*, February 10 (11:59 p.m. EST) through February 14 (11:59 p.m. EST), the crawl must be aired for 5 minutes of every hour of the station's analog broadcast day, including during primetime.¹⁵ For the final two days, *i.e.*, February 16 (11:59 p.m. EST) through February 17 (11:59 p.m. EST), the crawl must be aired for 10 minutes of every hour of the station's analog broadcast day, including during primetime. We recognize that some stations may lack the technical capability to air crawls and will require such stations to instead air information about the station's termination of analog service on February 17 in an alternative format for a comparable duration.¹⁶ We remind stations of the importance of close coordination with the cable systems, satellite operators, and other Multichannel Video Programming Distributors ("MVPDs") that carry their signals.¹⁷ It is essential that stations communicate directly and

¹³ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3058, ¶ 134. These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received; (5) information about the availability of digital- to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. *Id.* We note that these viewer notifications are in addition to, and separate from, the notification requirements established in the Commission's *DTV Consumer Education Initiative* proceeding. *See DTV Consumer Education Initiative*, MB Docket No. 07-148, Report and Order, 23 FCC Rcd 4134 (2008); Order on Reconsideration and Further Notice of Proposed Rulemaking, 23 FCC Rcd 7272 (2008) (collectively, "*DTV Consumer Education Orders*").

¹⁴ *See id.*

¹⁵ Stations may refer to the relevant provisions of our DTV Consumer Education rules concerning crawls, *see* 47 C.F.R. § 73.674(c)(3), except with respect to the information required in these crawls, in which case stations should refer to the *Third DTV Periodic Report and Order*, *see supra* note 13, to assure that the crawl provides adequate information. Consistent with the rules adopted in the *DTV Consumer Education Orders*, *see* 47 C.F.R. § 73.674(c)(3), and the *Third DTV Periodic Report and Order*, informative text crawls must: (1) Air during programming; (2) Be displayed so that the text travels across the bottom or top of the viewing area at the same speed used for other informative text crawls concerning news, sports, and entertainment information; (3) Be presented in the same language as a majority of the programming carried by the station; (4) Be displayed so that they do not block and are not blocked by closed-captioning or emergency information; and (5) Contain at least the information required by the *Third DTV Periodic Report and Order*, *see supra* note 13, but may contain more, provided they contain no misleading or inaccurate statements.

¹⁶ For example, for purposes of meeting this requirement, such stations may air additional PSAs.

¹⁷ *See Third DTV Periodic Report and Order*, 23 FCC Rcd at 3073-77, ¶¶ 170-178 (Section V.G.).

immediately with their MVPDs regarding their plans for termination of their analog signal in light of the statutory change in the transition deadline. Stations that intend to terminate their analog signal on February 17, 2009 must notify the MVPDs that carry their signals so that they can make the appropriate adjustments in their facilities to ensure a smooth transition. We also recommend that stations continuing to broadcast an analog signal after February 17 so inform the relevant MVPDs.

If several stations in a state or market decide that there are compelling reasons to terminate on February 17, 2009, they may, and are encouraged to, collaborate on informing their viewers that the change affects all or many stations in the area. In deciding whether to terminate on February 17, 2009, stations must consider their particular market circumstances and the readiness of their viewers to receive their digital broadcast signal. For example, stations should consider coupon request and redemption rates in their respective markets.¹⁸ Furthermore, as noted below, we encourage stations terminating analog TV service early to continue to broadcast emergency and DTV consumer education information on their analog signal.¹⁹

We remind stations that if they terminate their analog service prior to the June 12 transition date, they may operate only a digital facility that is approved for pre-transition service.²⁰ Stations that want to begin operating prior to the transition date on a post-transition digital facility that differs from their pre-transition facility must first file a request for digital Special Temporary Authority (STA) to seek Commission approval for an early transition.²¹ Pursuant to the *Third DTV Periodic Report and Order*, a station may request permission to operate its post-transition facility before the transition deadline, provided it demonstrates that it will (1) not cause impermissible interference to any authorized analog or pre-transition digital stations; (2) maintain at least its current digital service; and (3) commence full, authorized post-transition operations on the transition deadline.²² Stations requesting such approval must also indicate whether such early operation would result in loss of their own analog or digital service.²³ Therefore, in anticipation of a transition date change, a station with a post-transition construction permit containing a condition prohibiting use of the post-transition facility until February 18, 2009 will now be prohibited from using its post-transition facility until June 13, 2009, unless approved by the Commission, as permitted by the *Third DTV Periodic Report and Order*.

¹⁸ For information about coupon distribution and redemption statistics, visit the National Telecommunications and Information Administration (NTIA) website at https://www.ntiadtv.gov/coupon_stats.cfm.

¹⁹ See, *infra*, page 6 and notes 24 and 25 (discussing “analog nightlight”-type service).

²⁰ See *id.* at 3051-52, ¶¶ 121-23.

²¹ The STA request must demonstrate that early operations would not cause impermissible interference to any pre-transition operations. We note that all post-transition construction permits preclude operation before the transition date as a condition on that permit. The following condition is placed on post-transition only construction permits: “This is to notify you that the grant of this construction permit is subject to the condition that this facility can not commence operation prior to midnight of February 17, 2009, or by such other date as the Commission may establish in the future, without prior approval from the Commission.”

²² See *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3051-52, ¶¶ 121-23.

²³ *Id.* at ¶ 122.

We encourage stations that terminate their analog signal on February 17, 2009, to continue to broadcast on their analog signal information regarding their transition and, if necessary, emergency information. Stations in Wilmington, NC and Hawaii that transitioned early on a market-wide basis voluntarily broadcast a “slate” describing the transition and providing sources for information about actions viewers should take to retain television service.²⁴ Similarly, the Commission recently implemented “analog nightlight” service in anticipation of the planned February 17, 2009 DTV transition deadline in compliance with the Analog Nightlight Act.²⁵ We find this DTV transition information particularly important to limit viewer confusion in light of the change in DTV transition deadline and the station’s termination of normal analog programming. We urge stations to air this analogous nightlight programming for a minimum of two weeks following their termination of normal analog programming. Stations that intend to provide this limited programming should so indicate in their analog termination notification to the Commission.²⁶ We note that, because the overall transition is not taking place on February 17, stations may provide this nightlight-type service after their analog termination on February 17, even if they are not included in the list of stations eligible to participate in the analog nightlight program.²⁷

Going forward, after February 17, 2009, stations that wish to terminate analog service before 11:59:59 pm on June 12, 2009 – the new DTV transition deadline date that will be established by the DTV Delay Act – must comply with the requirements in the *Third DTV Periodic Report and Order*. We find that compliance with the *Third DTV Periodic Report and Order* is consistent with the express language in the DTV Delay Act and will protect viewer expectations. Whereas viewers may expect some stations to terminate on February 17, 2009, as originally planned, viewers are likely to expect that stations that do not terminate on that date will continue until the new transition date of June 12, 2009, absent viewer notifications to the

²⁴ See News Release, “Wilmington Broadcasters Will Provide Emergency Announcements and Informational Messages about the DTV Transition after September 8 on Traditional Analog Channels,” FCC (Aug. 18, 2008). See also Erika Engle, “Hawaii First State To Go All-Digital,” Honolulu Star Bulletin, Feb. 2, 2009, available at http://www.starbulletin.com/business/20090116_Hawaii_first_state_to_go_all-digital.html (last visited Feb. 2, 2009).

²⁵ On January 15, 2009, the Commission adopted and released the Report and Order implementing the Short-term Analog Flash and Emergency Readiness Act, Pub. L. No.110-459, 122 Stat. 5121 (2008) (“*Analog Nightlight Act*”). As mandated by the Analog Nightlight Act, the Commission developed and implemented the Analog Nightlight program to “encourage and permit” continued analog TV service for a period of 30 days after the DTV transition date to broadcast DTV and emergency information. See *Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program*, MB Docket No. 08-255, Report and Order, FCC 09-2 (rel. Jan. 15, 2009) (“*Analog Nightlight Order*”).

²⁶ Stations that air such “nightlight” service prior to the new June 12, 2009 transition deadline will not need the blanket license extension provided for in the Commission’s Order implementing the DTV Nightlight Act and will not be subject to Analog Nightlight programming restrictions imposed by that Act because they are not subject to the Analog Nightlight program, which applies after the nationwide DTV transition deadline.

²⁷ *Analog Nightlight Order*, *supra* note 25, at app A.

contrary.²⁸ The *Third DTV Periodic Report and Order* required that stations terminating analog service more than 90 days prior to the transition deadline must request Commission approval at least 90 days prior to the planned termination date and air viewer notifications for at least 60 days prior to termination.²⁹ Therefore, stations will not be permitted to terminate their analog service between and including February 18 through March 13, 2009 because they have not provided the required notifications and obtained the required Commission approval for early termination. We find that there is insufficient reason to grant a waiver of the procedures and requirements adopted in the *Third DTV Periodic Report and Order* for this time period. Unlike the legitimate station expectations that support the partial waiver for analog terminations on February 17, stations cannot have reasonably relied on plans to terminate analog service after February 17 because such operation would have been contrary to existing law.

As of March 14, 2009, which date is 90 days before the new statutory transition deadline of June 12, 2009, the streamlined notification procedures in the *Third DTV Periodic Report and Order* apply for stations planning to terminate analog service on a date 90 days before the transition date.³⁰ Accordingly, for analog terminations on or after March 14, stations must notify the Commission at least 30 days prior to the termination date and provide viewer notifications for at least 30 days prior to their termination of analog service.³¹ Except in the case of equipment failure, the Commission will not permit stations to terminate analog service with less than 30 days notice to the Commission and the stations' viewers. Of course, the Commission reserves the right to amend these rules and procedures, if necessary, to carry out the purposes of the DTV Delay Act.³²

As noted above, all stations that want to terminate on February 17 must notify the Commission of this decision no later than Monday, February 9, 2009.³³ This notification requirement applies to all stations that have previously submitted notifications regarding termination on February 17, even if they previously submitted such a notification, as well as stations planning to terminate that have not previously notified us. We are requiring such re-notifications to provide stations with the opportunity to consider their decision with full knowledge of the statutory change in the date and the applicable Commission procedures. Notifications of intent to terminate must be made in good faith. The Commission, consumers, public safety officials, MVPDs and others will rely on these notifications. We expect that stations indicating their intent to terminate their analog service on February 17 will do so. Therefore, as a condition of the waiver granted herein, the Commission will not permit stations to withdraw or modify these notifications except in the event of emergency or disaster

²⁸ Stations that will comply with the new DTV transition deadline need not notify the Commission nor provide the viewer notifications described in this Public Notice. The Commission will address the DTV Consumer Education requirements that will apply in the event the transition deadline is delayed in a forthcoming decision.

²⁹ See, *supra*, note 3.

³⁰ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3058, ¶¶ 133-134.

³¹ *Id.*

³² See, *supra*, note 6 (discussing DTV Delay Act, § 4(c)).

³³ See, *supra*, note 11 (describing filing procedures).

necessitating the continued operation of analog service. The analog operations of stations submitting notification of intent to terminate analog service on February 17, 2009 pursuant to this Public Notice will no longer be protected from interference after February 17, 2009.³⁴

In addition to the stations that intend to terminate analog service on February 17, 2009, there are also stations that have previously notified the Commission of analog termination prior to February 17, in compliance with the procedures in the *Third DTV Periodic Report and Order*. These stations are in two categories: (1) those that have already terminated their analog service, and (2) those that intend to terminate before February 17. We recognize that stations in either category may wish to make a change as a result of the extension of the nationwide deadline and provide for both categories in this Public Notice.

First, we will permit stations that have previously terminated analog service to request permission to resume analog broadcasting. Stations that have already terminated their analog service and desire to resume analog broadcasting must file a request for STA so that the Commission can determine if impermissible interference would be caused by the station's resumption of analog service and must provide the new date that they intend to terminate analog broadcasting if it is other than June 12, 2009.³⁵ Stations that have already terminated their analog service and do not wish to resume analog broadcasting are not required to notify the Commission.

Second, stations that previously notified the Commission that they intend to terminate their analog service on February 16 or earlier, and have not yet done so, must confirm whether they intend to terminate their analog signal prior to February 17 or if they intend to remain on the air with regular programming on their analog channel beyond February 17.³⁶ This confirmation is necessary to enable the Commission to accurately identify the stations that will no longer be broadcasting an analog signal. These notifications must be submitted no later than Monday, February 9, 2009.

For additional information, contact Shaun Maher, Shaun.Maher@fcc.gov, of the Media Bureau, Video Division, at (202) 418-2324; or Evan Baranoff, Evan.Baranoff@fcc.gov, of the Media Bureau, Policy Division, at (202) 418-7142.

Action taken by the Commission on February 5, 2009: Chairman Michael J. Copps and Commissioners Jonathan S. Adelstein and Robert M. McDowell.

- FCC -

³⁴ Stations that have notified us that they are terminating analog service on February 17, 2009 pursuant to this Public Notice but that intend to provide "nightlight-type" service on their analog channel may do so for up to 30 days following February 17, but may provide only such service on their analog channel. *See, supra*, page 3.

³⁵ Stations filings STA requests must use the CDBS Informal Application filing form. For more information on Informal Filings in CDBS, please refer to this web page: http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq_informal.htm.

³⁶ *See, supra*, note 11 (describing filing procedures).