



# PUBLIC NOTICE

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## **DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline**

In paragraph 78 of the *Second DTV Periodic Review Report and Order*, released September 7, 2004 (19 FCC Rcd 18,279) (“*Order*”), the Commission established the following deadlines for stations to construct and operate digital facilities in order to retain interference protection within their replication or maximization service areas:

July 1, 2005 – Use-it-or-lose-it deadline for DTV licensees affiliated with the top-four networks (*i.e.*, ABC, CBS, Fox, and NBC) in markets 1-100. Those licensees that receive a tentative channel designation in the channel election process on their current digital channel must construct full, authorized facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 100 percent of the number of viewers served by the 1997 facility on which their replication coverage was based.

July 1, 2006 – Use-it-or-lose-it deadline for all other commercial DTV licensees as well as noncommercial DTV licensees. Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized DTV facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 80 percent of the number of viewers served by the 1997 facility on which their replication coverage was based.

The *Order* states that a station that fails to meet the applicable replication/maximization requirements will lose interference protection to the unused portion of the associated area as of the applicable interference protection deadline. In addition, a station failing to meet the deadline will lose the ability to “carry over” its interference protection to its unserved DTV service area on its post-transition channel (*e.g.*, its in-core NTSC channel or other channel awarded pursuant to the channel election process). *Order*, 19 FCC Rcd 18,279, ¶ 85.

Except in unusual and limited circumstances, for stations subject to the July 1, 2005 deadline the Commission will cease providing interference protection as described in the *Order* after the deadline. The *Order* provides that the Commission may grant a waiver in the form of a

temporary extension on a six-month basis if good cause is shown for stations that are unable to provide the required service by the applicable deadline because of severe financial constraints or circumstances beyond a station's control. The *Order* states that broadcasters seeking a waiver on the basis of financial hardship must make a showing similar to that required to obtain an extension of the DTV construction deadlines on financial hardship grounds. *Order*, 19 FCC Rcd 18,279, ¶ 87.

#### Compliance with the Replication/Maximization Interference Protection Deadline

Unless a station has been granted a waiver of the July 1, 2005 interference protection deadline by the Commission, a station subject to that deadline must either have a license for its operating facilities by July 1, 2005 or by that date file with the Commission a license application or an application for modification to be followed shortly by a license application. A station with an existing license that will remain on its DTV channel post-transition must be operating at the power level specified in the license by July 1, 2005 in order to meet the deadline.

A station subject to the July 1, 2005 deadline that intends to operate at facilities different from those authorized in an outstanding license or construction permit must file by July 1, 2005 an application for modification of the license or permit that is consistent with the outstanding DTV freeze (DA 04-2446, rel. August 3, 2004). These stations must subsequently file a license application for these facilities.

#### Requests for Waiver of the Replication/Maximization Interference Protection Deadline

Licensees that want to request a waiver of the July 1, 2005 replication/maximization interference protection deadline based on severe financial constraints or circumstances beyond their control must file such requests with the Commission no later than July 1, 2005. Requests should be made in letter format, should reference MB Docket No. 03-15, and should be filed electronically using the ECFS. A copy of each waiver request must also be delivered to Shaun Maher, Federal Communications Commission, Room 2-A820, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. Requests for extension of an outstanding STA may be filed as part of a request for waiver of the replication/maximization interference protection deadline. The STA will automatically be extended pending action on the waiver request. An outstanding construction permit for facilities for which a request for waiver of the replication/maximization interference protection deadline has been filed will also be extended automatically pending action on the waiver request.

The filing of a request for waiver of the replication/maximization interference protection deadline will automatically toll the deadline pending consideration of the request. The Media Bureau has the authority to grant up to two 6-month extensions of the deadline using criteria similar to that for DTV construction deadline extension requests (*i.e.*, severe financial constraints or circumstances beyond a station's control). See *First DTV Periodic Review Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 20594, 20611-20612 (2001). Subsequent extension requests must be approved by the Commission.

Several stations have indicated that they may be able to come close to meeting the applicable replication or maximization requirements but cannot reach 100% replication or maximization. For example, some stations with a top-mounted analog antenna and a side mounted digital antenna state that they cannot completely replicate their analog signal in digital without switching the antennas, which would cause some analog viewers to lose service. For stations in this situation, the following should be addressed in submitting a request for waiver of the interference protection deadline: (1) how close to full replication/maximization the station will be as of the deadline; (2) the reason the station is unable to fully comply; (3) the cost to the station and the impact on viewers if the station were required to fully comply; (4) whether the station will be able to modify its operation to fully comply after analog operation terminates (e.g., relocate their DTV antenna to the top of the tower); and (5) any other relevant factors.

### Impact of Other Build-Out Deadlines

In paragraph 111 of the *Order*, the Commission requires stations that have not received a DTV construction permit to build the facilities they were allotted in the 1998 DTV Table of Allotments (“checklist” facilities) by August 4, 2005. For stations in this category subject to the July 1, 2005 replication/maximization interference protection deadline, the deadline for replication or maximization in connection with this checklist facility will automatically be extended to August 4, 2005. Stations that are unable to meet the August 4 deadline must file a request for waiver of the deadline no later than August 4, 2005. Requests should be made in letter format, should reference MB Docket No. 03-15, and should be filed electronically using the ECFS. A copy of each waiver request must also be delivered to Shaun Maher, Federal Communications Commission, Room 2-A820, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.

The filing of a request for waiver of the interference protection deadline will automatically toll the deadline pending consideration of the waiver. The Media Bureau has the authority to grant up to two 6-month extensions of the deadline using criteria similar to that for DTV construction deadline extension requests (*i.e.*, severe financial constraints or circumstances beyond a station’s control). Subsequent requests must be approved by the Commission. Pursuant to paragraph 113 of the *Order*, any such request must relate to the checklist facility, not the pending non-checklist application.

As indicated in paragraph 113 of the *Order*, stations with pending DTV CP applications that build checklist facilities in a timely manner may continue to pursue their non-checklist (e.g., maximization) applications on file with the Commission. The deadlines for use-or-lose interference protection and for building checklist facilities do not apply to the facility requested in the non checklist application.

A number of stations have construction permits with deadlines that extend beyond the July 1 replication/maximization interference protection deadlines. As stated in paragraph 84 of the *Order*, these stations must meet the replication/maximization interference protection deadline by the expiration date specified in their construction permit. Thus, for example, a station with a construction permit that expires on September 1, 2005 will automatically have its replication/maximization interference protection deadline extended to September 1, 2005. If that

station cannot meet the September 1 deadline, it must file a waiver request no later than September 1. The filing of such a request automatically tolls the construction deadline pending consideration of the request.

For stations that receive construction permits that extend beyond December 31, 2006, the Commission will state on the grant that the permit expires on the appropriate date “or the end of the digital television transition, whichever occurs first.” Any existing construction permits that extend beyond December 31, 2006 will be modified accordingly.

For additional information, contact Kim Matthews or Joyce Bernstein of the Policy Division, Media Bureau, at (202) 418-2120 or at [kim.matthews@fcc.gov](mailto:kim.matthews@fcc.gov) or [joyce.bernstein@fcc.gov](mailto:joyce.bernstein@fcc.gov). TTY: (202) 418-7172.

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