



PUBLIC NOTICE

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DA 07-1847
April 25, 2007

DTV Transition - Approval of "Flash Cut" Requests

By this Public Notice, the Media Bureau grants the requests of 32 stations that validly elected during the digital television ("DTV") channel election process to surrender their pre-transition DTV channel, continue to operate in analog on their analog channel, and then "flash cut" (*i.e.*, change directly from analog operations on their analog channel to digital operations on a digital channel) by the end of the DTV transition.¹ We find that the stations listed in the attached Appendix meet the flash cut criteria established in the *Second DTV Periodic Review Report and Order*² and are approved to turn off or discontinue construction of their pre-transition DTV channel.

Congress has established February 17, 2009 as the deadline for the end of the DTV transition, when full-power stations must cease analog transmissions.³ In the *Second DTV Periodic Review Report and Order*, the Commission adopted a multi-step channel election process for full-power TV broadcast licensees and permittees (hereinafter "licensees") to select their ultimate DTV channel inside the core TV spectrum (*i.e.*, channels 2-51).⁴ The Commission also delegated to the Media Bureau the authority to grant flash cut requests made by stations during the channel election process.⁵

In the *Second DTV Periodic Review Report and Order*, the Commission decided to permit two categories of stations to flash cut. First, the Commission concluded it was in the public interest to allow

¹ "Flash cut" here refers to a station that gives up its pre-transition DTV channel and transitions to digital service either on its analog channel or on a newly allotted channel. We note that the request from Paxson Batavia License, Inc., licensee of WPXJ(TV), Batavia, NY, to surrender its DTV Channel 53, and flash-cut on its NTSC Channel 51, was previously approved. See Letter, DA 05-2224, 20 FCC Rcd. 13,388 (MB Aug. 1, 2005).

² *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18321-18323, ¶¶ 95-97, 18325, ¶¶ 102-104 (2004) ("*Second DTV Periodic Review Report and Order*").

³ See 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) ("DRA"), codified at 47 U.S.C. §§ 309(j)(14) and 337(e).

⁴ *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18292, ¶ 33. See also *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Further Notice of Proposed Rule Making, 21 FCC Rcd 12100 (2006) ("*Seventh FNPRM*") (proposing a new DTV Table of Allotments ("DTV Table") and reference facilities for stations' post-transition operations ("Appendix B facilities")).

⁵ *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18322, ¶ 95.

satellite stations⁶ to flash cut because they generally have an insufficient economic base to support construction of separate digital facilities and operation of both analog and digital stations concurrently.⁷ The Commission also concluded that construction and operation of out-of-core channels are costly and potentially wasteful over the long-term given that all out-of-core DTV facilities must cease broadcasting at the end of the transition. The Commission found that allowing stations with an out-of-core channel to flash cut would be consistent with the significant public interest in rapid band-clearing and would lead to a reduction in unwarranted expenses.⁸

Consequently, the *Second DTV Periodic Review Report and Order* authorized stations to elect to flash cut during the channel election process if certain criteria were met.⁹ Specifically, satellite stations were permitted to flash cut because of their unique status and circumstances.¹⁰ In addition, stations with out-of-core DTV channels were permitted to flash cut, provided the station demonstrated that grant of the request would not result in the loss of a DTV channel affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox).¹¹ The Commission stated that this presumption was neither conclusive nor dispositive, and that special circumstances raised by the resulting loss of digital broadcast service could be sufficient to rebut the presumption.¹² In addition, if a station did not meet the presumption, the Commission stated that the flash cut request would be considered based on all relevant public interest factors, including advancement of the provision of wireless and public safety services, the acceleration of the DTV transition, and the loss of broadcast service.¹³

We find that the stations listed in the attached Appendix meet the flash cut criteria established in the *Second DTV Periodic Review Report and Order*. The Appendix includes (1) satellite stations, (2) stations with out-of-core DTV channels that met the presumption condition, and (3) one station affiliated with a top-four network whose pre-transition digital channel assignment is out-of-core.¹⁴ We find that this station offered an appropriate public interest showing to justify its request to flash cut on its analog channel. Specifically, grant of this flash cut request creates an opportunity for new wireless services to become available in the market area served by this station.¹⁵ We also find that there is no actual loss of

⁶ TV satellite stations are full-power broadcast stations authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is typically commonly owned. Eligible satellite stations were assigned a paired DTV channel in the current DTV Table. The *Second DTV Periodic Review Report and Order* recognized that most satellite stations operate in small or sparsely populated areas that have an insufficient economic base to support full-service operations. *Id.* at 18323-18324, ¶ 98.

⁷ *Id.* at 18324, ¶ 100.

⁸ *See id.* at 18322, ¶ 95.

⁹ *See id.* at 18322, ¶ 95 and 18325, ¶ 102.

¹⁰ *Id.* at 18325, ¶ 102.

¹¹ The Commission has "consistently relied on affiliates of the four largest national television networks to achieve the necessary milestones throughout the DTV transition." *Id.* at 18322, ¶ 95.

¹² *Id.* at 18323, ¶ 96.

¹³ *Id.*

¹⁴ Lilly Broadcasting, LLC, licensee of WENY-TV, channel 36, and permittee of unbuilt WENY-DT, channel 55, requested flash cut permission for WENY, an ABC affiliate.

¹⁵ With the grant of this flash cut request, WENY will vacate channel 55. QUALCOMM Incorporated holds licenses for Channel 55 spectrum. Approval of this request to flash cut will allow QUALCOMM's wholly-owned subsidiary, MediaFLO USA, Inc., to expand its "mediacast" service coverage in the New York market without

broadcast service to the public because this station has not built its digital facility on out-of-core channel 55.

Accordingly, the stations listed in the Appendix are granted permission to discontinue broadcasting on, or discontinue construction of, their pre-transition DTV facilities in accordance with the procedures set forth in the Commission's rules.¹⁶

In order to further facilitate the transition, we also invite any other station to request to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order* (as discussed above).¹⁷ Stations requesting flash cut approval should do so in accordance with the Commission's rules concerning license modification and discontinuance of operations.¹⁸ Consistent with these rules, stations may declare their intent to flash cut by sending a letter to the Video Division of the Media Bureau and an e-mail to flashcut@fcc.gov.

For additional information, contact; Nazifa Sawez, Nazifa.Sawez@fcc.gov, of the Media Bureau, Video Division, (202) 418-1600 or Kim Matthews, Kim.Matthews@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2154.

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having to protect WENY-DT on co-channel 55. See Public Notice, "Wireless Telecommunications Bureau Grants Lower 700 MHz Band Licenses; Auction Event No. 49," 18 FCC Rcd 25724 (WTB 2003).

¹⁶ Section 73.1750 requires stations to notify the Commission by letter of the permanent discontinuance of operation at least two days before operation is discontinued. 47 C.F.R. § 73.1750. As the station license covers both analog and DTV service, we will not require a station electing to flash cut and to discontinue DTV service to return its license or other instruments of authorization to the Commission as would be required if the station were to cease all broadcast operation. *Id.* In addition, stations electing to discontinue digital operations pre-transition and operate only in analog for the remainder of the transition must provide notice to the public of the discontinuance of digital service as required by Section 73.3580(d)(3). 47 C.F.R. § 73.3580(d)(3). The flash cut permission granted herein pertains only to the enumerated stations and only with respect to the pre-transition digital channels listed on the attached Appendix.

¹⁷ In interim since the adoption of the *Second DTV Periodic Report and Order*, Congress enacted the February 17, 2009 hard deadline for the transition from analog to digital full power television service. See, *supra*, note 3. Allowing additional stations to request authority to flash cut will help to meet this firm statutory deadline. At this time, stations are eligible to flash cut under the *Second DTV Periodic Report and Order* if they are (1) stations with an out-of-core digital channel or (2) satellite stations whose pre-transition channel is not their post-transition channel. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18321-18323, ¶¶ 95-97, 18325, ¶¶ 102-104. Consistent with the criteria established in the *Second DTV Periodic Review Report and Order*, flash cut approval for non-satellite stations assigned an out-of-core DTV channel is presumed to be in the public interest if the station shows grant of the request would not result in the loss of a DTV channel affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox). If a station does not meet the presumption condition, we will consider all the relevant public interest factors in deciding whether to approve the request. These factors include the advancement of the provision of wireless and public safety services, the acceleration of the DTV transition, and the loss of broadcast service. Stations that have been admonished by the Commission do not qualify for the presumption condition. *Id.* Determination of other criteria that justify permission to flash cut is a matter that in the future may be considered by the Commission.

¹⁸ See 47 C.F.R. §§ 73.1690(b) (modification of license or authorization) and 73.1750 (discontinuance of operations). See also note 16, *supra*.