

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
DTV Consumer Education Initiative) MB Docket No. 07-148
)

ORDER

Adopted: September 24, 2008

Released: September 24, 2008

By the Chief, Media Bureau:

I. INTRODUCTION

1. WSFX-TV, WECT-TV, and WWAY-TV (“the Stations”) are full-power stations subject to the Commission’s requirements regarding consumer education about the DTV transition¹ and early termination of analog broadcast service.² As the only such participants in the first-in-the-nation Wilmington test market,³ the Stations have worked closely with the Commission to establish an early transition date for the Wilmington market, and to educate Wilmington consumers about this early transition. Due in no small part to the dedicated efforts of the Stations, Wilmington has successfully become the first and only market to complete its transition to digital. As a result, these participating stations seek, and we grant, formal approval for early termination of their analog service and DTV consumer education efforts.

II. DISCUSSION

A. Early Termination of Analog Broadcast Service

2. In the *Third Periodic*, we announced that stations would be permitted to cease analog broadcasting prior to February 17, 2009, but only upon seeking and obtaining approval from the Media Bureau by demonstrating good cause, and after educating their viewers about the planned service termination.⁴ Pursuant to the policy established in the *Third Periodic*, each of the Stations has individually filed a Request for Special Temporary Authority (“STA”) with the Commission, seeking

¹ *In the Matter of DTV Consumer Education Initiative*, Report and Order, 23 FCC Rcd 4134, MB Docket No. 07-148 (Mar. 3, 2008) (“*DTV Consumer Education Order*”).

² *In the Matter of Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket 07-91, Report and Order, 23 FCC Rcd 2994, ¶¶115-117 (2007) (“*Third Periodic*”).

³ The commercial broadcasters serving the Wilmington television market voluntarily agreed to turn off their analog signals at noon on September 8, 2008. This test market is an early transition that is giving broadcasters and consumers a chance to experience in advance the upcoming DTV transition.

⁴ *Third Periodic* at ¶¶115-117. After November 19, 2008, stations may terminate or reduce analog service before February 17, 2009, without prior Commission approval but must notify the Commission and viewers in advance. See, *Third Periodic* ¶¶133-134.

permission to terminate analog programming on September 8, 2008, and all analog service at a later date.⁵ The Stations note and the Commission recognizes that, because of Wilmington's unique position as the nation's DTV transition test market, they do not seek an immediate cessation of all analog service. For technical, educational, and public safety purposes, the analog signal of these stations will remain on the air through at least the end of September.⁶ Nonetheless, the analog signals will carry no regular programming after the September 8 transition, instead carrying only DTV transition educational information and emergency information if necessary.

3. As noted, the *Third Periodic* requires not only Commission permission for early termination of analog service; it also requires that stations notify viewers of that termination four times a day for the 60 days leading up to the termination.⁷ The Stations note in their filings that they have been engaging in extensive consumer education and providing regular viewer notifications regarding the early transition of the Wilmington market and this termination of analog service since May of this year, significantly more than 60 days prior to the planned termination of analog service on September 30.⁸ Furthermore, we note that September 8 was the final day of the DTV transition for these three stations, in their unique position as part of the first-in-the-nation market-wide transition in Wilmington.

4. After a thorough review of these requests, we conclude that the public interest would be served by a grant of the requests made by each of the station licensees. Therefore, not earlier than September 30, 2008: Southeastern Media Holdings, Inc. may terminate all analog operations on WSFX-TV; WECT License Subsidiary, LLC may terminate all analog operations on WECT-TV; and WWAY-TV, LLC may terminate all analog operations on WWAY-TV.⁹ Furthermore, each of these licensees has already provided ample viewer notification, as required by the *Third Periodic*. The Stations are providing continuing notifications about their local transition 24 hours a day on their analog channels through at least September 30, 2008,¹⁰ and are not required to provide any additional notifications regarding these service terminations.

⁵ WWAY-TV, File No. 20080903AAH (filed Sept. 3, 2008); WECT-TV, File No. 20080905AAJ (filed Sept. 5, 2008); WSFX-TV, File No. 20080905AAK (filed Sept. 5, 2008).

⁶ FCC Press Release, "Wilmington Broadcasters Will Provide Emergency Announcements And Informational Messages About The DTV Transition After September 8 On Traditional Analog Channels" (Aug. 18, 2008).

⁷ *Third Periodic* at ¶ 117.

⁸ Furthermore, the Stations have gone beyond the requirements of either the DTV consumer education rules or the *Third Periodic*. For example, WECT has maintained a 24-hour helpline; WWAY has run almost-daily news stories; and WSFX has sent its general manager to speak to groups throughout Wilmington. WECT Letter (filed Sept. 10, 2008); WWAY Letter (filed Sept. 11, 2008); WSFX Letter (filed Sept. 10, 2008). *See also*, ¶ 7, *infra*, discussing station efforts in more detail.

⁹ WWAY-TV is the only one of the Stations that is contemplating continuing analog service into October, but all of the Stations note that they may delay termination of their analog signal in order to provide information to the public in an emergency situation. We note that, with respect to radio frequency radiation ("RFR"), we expect compliance with Section 1.1307(b) of the Commission's Rules to be achieved.

¹⁰ As the Commission's August 18, 2008, press release notes, stations that transition at the conclusion of the Nation's transition on February 17, 2009, will not be able to retain analog signals for any purpose, including emergency broadcasts. Wilmington stations and viewers, however, will be able to receive emergency announcements, and other informational messages about the DTV transition on traditional analog channels. This is a benefit of their participation in the early transition. The regular message that will be provided on the Wilmington analog stations reads:

(continued....)

B. Early Termination of Consumer Education Obligations

5. The Stations have also filed Requests for Waivers of the Commission's Rules requiring broadcasters to engage in on-air DTV transition education efforts.¹¹ They argue that, because the Wilmington transition, unlike that of every other market in the nation, will be complete by September 8, they should not be required to engage in on-air consumer education efforts after that date. The licensees of WECT-TV and WSFX-TV also seek a waiver of the requirement to file Form 388 (consumer education report) covering any period after September 8. We grant the Stations' requested waivers, and find that continued consumer education efforts that continue for a short time after September 8 via the Stations' analog signals, along with Form 388 reporting efforts for the third quarter of 2008, are in the public interest, and that no additional consumer education efforts are necessary.

6. The DTV transition consumer education requirements set forth in Section 73.674 of the Commission's Rules do not apply indefinitely, but rather are tied to the conclusion of the transition itself.¹² Since Wilmington, alone among television markets, is concluding its transition early, the Stations argue that their consumer education obligations should conclude early as well. They note that September 8 is the last day of the Wilmington transition, and no analog programming will be available in the Wilmington market after that date. Instead of programming, the Stations will provide DTV consumer education information via their analog transmitters, for at least the remainder of the month of September. The Wilmington Stations are thus going to continue reaching over-the-air analog viewers throughout their market, and providing valuable, targeted, education and information about the transition to the very consumers who most need it. Given the Stations' extraordinary pre-transition consumer education efforts,¹³ their commitment to providing consumer education through at least the end of the third quarter via their analog signal, and the market-wide transition to digital on September 8 in Wilmington, we find that the public interest will be served by granting the Stations' waiver requests. We therefore waive the DTV transition consumer education requirements set forth in Section 73.674 of our Rules for each of the Stations, effective September 8, 2008.

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"At 12 noon on September 8, 2008, commercial television stations in Wilmington, North Carolina began to broadcast programming exclusively in a digital format.

If you are viewing this message, this television set has not yet been upgraded to digital.

To receive your television signals, upgrade to digital now with a converter box, a new TV set with a digital (ATSC) tuner or by subscribing to a pay service like cable or satellite.

For more information call:1-877-DTV-0908 or TTY:1-866-644-0908 or visit www.DTVWilmington.com."

¹¹ 47 C.F.R. § 73.674.

¹² 47 C.F.R. § 73.674(b)(3).

¹³ We note that the Stations have engaged in extensive and wide-ranging consumer education efforts stretching far beyond the requirements of our Rules. These range from: participation in community festivals, like the Cape Fear Blues Festival and the Battleship Blast Independence Day celebration; direct consumer assistance at events like the Carolina Beach Fest and DTV Expo; daily news stories and "countdown clocks"; working with religious organizations to train volunteers for in-home converter box installation assistance; and working with Wilmington Latino media to support efforts to inform the Hispanic community; to WECT's provision of live DTV information and assistance, 24 hours a day, through a telephone hotline. WECT Letter (filed Sept. 10, 2008); WWAY Letter (filed Sept. 11, 2008); WSFX Letter (filed Sept. 10, 2008).

7. As noted above, two of the Stations sought a waiver of the requirement to file Form 388, the DTV Transition Education Report, for the periods of time in which they have no educational obligation. We find that no interest is served by requiring the Stations to file reports addressing expired obligations, and therefore waive the requirement for any of the Stations to complete and file Form 388 as it applies to periods after the conclusion of their mandatory education efforts. We note that these stations may file Form 388 for the fourth quarter and beyond to reflect voluntary consumer education outreach, particularly if they continue to provide educational information via their analog signal. However, we will waive the requirements of Section 73.3526(e)(11)(iv) of our Rules effective October 11, 2008, and not require them to file Form 388 for periods after the third quarter of 2008.

III. CONCLUSION

8. The unique circumstances surrounding the early DTV transition of the Wilmington, NC market places WSFX-TV, WECT-TV, and WWAY-TV in a position wholly unlike that of any other station in the country. Therefore, we grant the Stations' STA requests to terminate analog service no earlier than September 30, 2008. The Stations first discussed these terminations with the Commission in April of 2008, and since they were announced publicly on May 8, 2008, the Stations have provided regular detailed notices to viewers explaining the early termination and the actions those viewers must take to continue viewing the Stations' signals. As noted, this education will continue by the broadcast of notices on the analog service through the termination of the analog signal. Therefore, we find the Stations in compliance with the analog termination viewer notification requirements established in the *Third Periodic*. Finally, we grant each of the Stations a waiver of the consumer education requirements in Section 73.674 of our Rules, and of the consumer education reporting requirements in Section 73.3526(e)(11)(iv) of our Rules, to the extent that they require consumer education after September 30, 2008, and reporting on consumer education efforts that take place after the third quarter of 2008.

IV. ORDERING CLAUSES

9. IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 303, and Sections 1.3 and 73.1635 of the Commission's Rules, 47 C.F.R. §§ 1.3 and 73.1635, this Report and Order IS ADOPTED and a limited waiver of Sections 73.674 and 73.3526(e)(11)(iv) of the Commission's Rules, 47 C.F.R. §§ 73.674 and 73.3526(e)(11)(iv), IS GRANTED to the licensees of WSFX-TV, WSFX-DT, WECT-TV, WECT-DT, WWAY-TV, and WWAY-DT for the operation of those stations.

10. IT IS FURTHER ORDERED that the request of Southeastern Media Holdings, Inc. to terminate all analog operations on WSFX-TV not earlier than September 30, 2008 (File No. 20080905AAK) IS GRANTED; that the request of WECT License Subsidiary, LLC to terminate all analog operations on WECT-TV not earlier than September 30, 2008 (File No. 20080905AAJ) IS GRANTED; and that the request of WWAY-TV, LLC to terminate all analog operations on WWAY-TV not earlier than September 30, 2008 (File No. 20080903AAH) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau