

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

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

**ORDER**

**Adopted: March 25, 2009**

**Released: March 26, 2009**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. To ensure that consumers are educated and informed about the digital television (DTV) transition, the Commission established several rules requiring a coordinated, national DTV consumer education campaign by television broadcasters, Multichannel Video Programming Distributors (“MVPDs”), telecommunications carriers, and manufacturers.<sup>1</sup> KHNL-TV/DT, KFVE-TV/DT, KOGG-TV/DT, KITV(TV), KHVO(TV), KMAU(TV), KIKU, KHON-TV, KHAW-TV, and KAIH-TV (“the Stations”), Time Warner Cable Inc., on behalf of its Oceanic Time Warner Cable division (“TWC”), and Hawaiian Telcom, Inc. (“HTI”), are subject to the Commission’s DTV transition consumer education requirements<sup>2</sup> and have filed separate requests for waiver of the Commission’s rules requiring DTV consumer education because of Hawaii’s early transition to digital television, which occurred on January 15, 2009, and their considerable efforts to educate Hawaii residents about the state’s early transition to digital television.<sup>3</sup> For the reasons set forth below, we grant TWC’s and HTI’s requested waivers, pursuant to Section 1.3 of the Commission’s rules, and dismiss as moot all of the Stations’ waiver requests.<sup>4</sup>

<sup>1</sup> *DTV Consumer Education Initiative*, MB Docket No. 07-148, Report and Order, 23 FCC Rcd 4134, (Mar. 3, 2008) (“*DTV Consumer Education Order*”); *Implementation of DTV Delay Act*, MB Docket No. 09-17, Third Report and Order and Order on Reconsideration, FCC 09-19, (rel. Mar. 13, 2009), available at 2009 WL 679621. (“*DTV Delay Act 3rd R&O*”).

<sup>2</sup> 47 C.F.R. § 54.418. 47 C.F.R. § 73.674. 47 C.F.R. § 76.1630. KITV (TV) asked specifically for waiver of children’s television processing requirements. See 47 C.F.R. §73.671. KHNL/KFVE License Subsidiary, LLC sought an additional waiver of 47 C.F.R. § 73.3526(e)(11)(iv), the requirement to file Form 388, DTV Transition Education Report.

<sup>3</sup> KHNL/KFVE License Subsidiary, LLC Notice Regarding Analog Operations and Request for Waiver of Section 73.674 (filed Jan. 9, 2009) (“KHNL/KFVE Letter”); Hearst-Argyle Stations Request for Waiver of Sections 73.674 and 73.671 (filed Dec. 31, 2008) (“KITV Letter”); KHLS, Inc. Request for Waiver of DTV Consumer Education Rules (filed Jan. 9, 2009) (“KHLS Letter”); KHLS, Inc. Supplement to Request for Waiver of DTV Consumer Education Rules (filed Feb. 26, 2009) (“KHLS Supplement”); NVT Hawaii Licensee, LLC Request for Waiver of Section 73.674 (filed Mar. 3, 2009) (“NVT Letter”); Oceanic Time Warner Cable a subsidiary of Time Warner Cable Inc. Petition for Waiver of Section 76.1630, MB Docket No. 07-148 (filed Mar. 11, 2009); Petition for Waiver of Hawaiian Telcom, Inc., MB Docket No. 09-17 (filed Mar. 13, 2009).

<sup>4</sup> 47 C.F.R. § 1.3.

## II. DISCUSSION

### A. The DTV Consumer Education Initiative

2. In 2008, the Commission adopted consumer education requirements that television broadcasters, MVPDs, telecommunications carriers, and manufacturers must comply with to educate consumers and viewers about the digital television transition and facilitate a smooth transition.<sup>5</sup> Congress recently extended the DTV transition deadline from February 17, 2009, to June 12, 2009, in an effort to provide consumers additional time to prepare for the transition from analog to digital broadcasting.<sup>6</sup> Many of the consumer education requirements were tied to the original February 17, 2009, nationwide transition date and would have remained in effect only through the end of March 2009.<sup>7</sup> Given the extension of the transition deadline, we revised these rules to ensure that DTV educational efforts continue through June 30, 2009.<sup>8</sup> We also implemented further adjustments to broadcasters' consumer education requirements to take into consideration the fact that some stations plan to transition to digital prior to June 12, 2009.<sup>9</sup> To eliminate any unnecessary burden and repetition of information after a station has completed its digital transition, the Commission eliminated the requirement for most stations to continue broadcasting DTV transition educational information through June 30.<sup>10</sup> The Commission concluded that for digital-only stations that have completed construction of their full post-transition digital facility, providing on-air consumer education via digital broadcasting would not produce sufficient benefits compared to its cost, and therefore stations are now permitted to end their participation in the mandated DTV consumer education initiative after they terminate analog programming.<sup>11</sup>

3. The DTV consumer education requirements set forth in Section 76.1630 of the Commission's rules, mandating that MVPDs provide monthly notices about the DTV transition in their customer billing statements, remain in effect through June 30, 2009.<sup>12</sup> Similarly, eligible telecommunications carriers ("ETCs") are required to include DTV education information in telephone bills to their Lifeline or Link-Up customers and information campaigns through June 30, 2009.<sup>13</sup>

### B. Requests for Waiver of Consumer Education Obligations in Hawaii

4. As noted above, the Commission recently eliminated broadcasters' post-transition obligations under the DTV Consumer Education Initiative. The Stations state in their waiver requests that

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<sup>5</sup> *DTV Consumer Education Order*, 23 FCC Rcd 4134 (2008).

<sup>6</sup> *Implementation of DTV Delay Act*, MB Docket No. 09-17, Second Report and Order and Notice of Proposed Rulemaking, FCC 09-11, (rel. Feb. 20, 2009), available at 2009 WL 436506 ("*DTV Delay Act Omnibus Order*").

<sup>7</sup> *Id.* at ¶¶ 9, 11.

<sup>8</sup> *Id.*

<sup>9</sup> *See generally*, *DTV Delay Act 3rd R&O*, FCC 09-19.

<sup>10</sup> *Id.* at ¶¶ 3, 33-37. Stations that have not completed construction of their authorized post-transition digital facility must continue complying with the consumer education requirements after they terminate their analog service until they complete construction and commence operation of their full authorized post-transition digital facility. *See* 47 C.F.R. § 674(b)(3), as amended as 73.674(b)(4).

<sup>11</sup> *Id.* at ¶ 37.

<sup>12</sup> 47 C.F.R. § 76.1630(a) ("Multichannel video programming distributors (MVPDs) shall provide subscribers with notices about the transition for over-the-air full power broadcasting from analog to digital service (the "DTV Transition") in the monthly bills or bill notices received by subscribers beginning April 1, 2009, and concluding on June 30, 2009").

<sup>13</sup> *See DTV Delay Act Omnibus Order* at ¶¶ 12-13.

January 15, 2009, was the last day of the Hawaii transition and no full power analog programming has been available since that date. In light of the Commission's recent decision regarding terminating broadcaster consumer education obligations upon completion of the station's digital transition, the waiver requests filed by the Stations are dismissed as moot.<sup>14</sup>

5. With regard to TWC's and HTI's waiver requests, under the recently adopted revisions to Section 54.418 and 76.1630 of the Commission's rules, TWC and HTI would be required to provide information to consumers regarding the switch to digital television through June 30, 2009. TWC and HTI state that because all broadcasters completed the transition from analog to digital service in Hawaii on January 15, 2009, in advance of the nationwide transition deadline, they should not be required to continue consumer education efforts.<sup>15</sup> TWC notes that the Hawaii transition from analog to digital was completed successfully.<sup>16</sup>

6. TWC asserts that it has gone to great lengths to educate customers and the Hawaiian public about the DTV transition both before and following the state's January transition date.<sup>17</sup> It notes that beginning in April 2008, it inserted notices about the DTV transition in paper and electronic billing statements and posted online alerts on the company's websites and local message boards.<sup>18</sup> Also, TWC points out that beginning in November 2008, all of its outreach efforts included specific information about the intended early DTV transition in Hawaii.<sup>19</sup> In addition, TWC states that special efforts were made to ensure that call center staff and consumer service lines had ready access to information regarding the transition.<sup>20</sup> HTI notes that it has fully and consistently complied with its consumer education obligations by including DTV education information in telephone bills to Lifeline and Link-up customers and in Lifeline and Link-up information campaigns.<sup>21</sup> TWC and HTI each assert that they are confident that their efforts to disseminate information to the Hawaiian public have been a success.<sup>22</sup>

7. TWC and HTI maintain that strict compliance with the new rules requiring continued information about the nationwide DTV transition on June 12 in billing notices and information campaigns would only risk causing confusion because the DTV transition in Hawaii is already complete.<sup>23</sup> In addition, TWC argues that grant of its waiver would be consistent with the Commission's decision granting a waiver regarding DTV education obligations to broadcast stations in Wilmington, North Carolina following the early transition in that test market.<sup>24</sup>

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<sup>14</sup> Consistent with our ruling, KHNL/KFVE's request for waiver of the requirement to file Form 388, DTV Transition Education Report and KITV (TV)'s request for waiver of children's television processing requirements are moot as well. See 47 C.F.R. § 73.671 and 47 C.F.R. § 73.3526(e)(11)(iv). See also *DTV Delay Act 3rd R&O*, FCC 09-19 at ¶ 36, note 83.

<sup>15</sup> TWC Petition at 1-2. HTI Petition at 1-2.

<sup>16</sup> TWC Petition at 7.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 2-3.

<sup>21</sup> HTI Petition at 2.

<sup>22</sup> TWC Petition at 3-4. HTI Petition at 2.

<sup>23</sup> TWC Petition at 3-4. HTI Petition at 3.

<sup>24</sup> *Id.* See *DTV Consumer Education Initiative*, Order, MB Docket No. 07-148, DA 08-2545 (rel. Sept. 24, 2008) available at 2008 WL 436995. ("*Wilmington Waiver Order*").

8. We conclude that TWC and HTI have demonstrated good cause for a waiver.<sup>25</sup> The DTV transition consumer education requirements do not apply indefinitely, but rather are tied to the conclusion of the transition itself.<sup>26</sup> In this regard, the Commission granted the Wilmington stations' requests that we waive their consumer education obligations following the stations' early transition to digital in September, 2008. The particular facts and circumstances recited in TWC's and HTI's waiver requests compel a similar decision. Also significant is the Commission's recent decision to allow broadcasters to terminate their participation in the DTV Consumer Education Initiative once they have completed the transition to digital programming. The digital transition in Hawaii concluded on January 15, 2009. TWC and HTI engaged in extensive pre-transition consumer education efforts and have continued reaching out to consumers with valuable, targeted, education and information since Hawaii's January 15, 2009 DTV transition. Additional requirements to inform and educate consumers in Hawaii about the digital transition would likely be confusing and are unnecessary. Therefore, given that Hawaii concluded its DTV transition early, TWC's and HTI's consumer education obligations should conclude early as well.

### III. CONCLUSION

9. The unique circumstances surrounding the early DTV transition in Hawaii places TWC and HTI in a position warranting special consideration. Hawaii stations transitioned to digital broadcasting nearly five months prior to the nationwide transition deadline, the Hawaii digital transition was completed successfully, and TWC and HTI complied with consumer education requirements prior to and following Hawaii's digital transition. TWC and HTI have shown that application of the DTV consumer education rules in these circumstances would be contrary to the public interest and that good cause exists for grant of the waiver requests. Accordingly, we grant TWC a waiver of the consumer education obligations in Section 76.1630 of the Commission's rules, to the extent they require consumer education after March 31, 2009. Also, we grant HTI a waiver of the consumer education obligations in Section 54.418 of the Commission rules, to the extent they require consumer education after March 31, 2009.

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<sup>25</sup> 47 C.F.R. § 1.3.

<sup>26</sup> See *Wilmington Waiver Order* at ¶ 6.

**IV. ORDERING CLAUSES**

10. **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 76.1630 of the Commission's Rules, 47 C.F.R. §§ 1.3 and 76.1630, this Order **IS ADOPTED** and a limited waiver of Section 76.1630 **IS GRANTED** to Oceanic Time Warner Cable in Hawaii.

11. **IT IS FURTHER 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 54.418 of the Commission's Rules, 47 C.F.R. §§ 1.3 and 54.418, a limited waiver of Section 54.418 **IS GRANTED** to Hawaiian Telcom, Inc.

12. **IT IS FURTHER ORDERED** that the limited waiver requests of Sections 73.674, 73.671, and 73.3526(e)(11)(iv) of the Commission's Rules, 47 C.F.R. §§ 73.674, 73.671, and 73.3526(e)(11)(iv) filed by the licensees of KHNL-TV/DT, KFVE-TV/DT, KOGG-TV/DT, KITV(TV), KHVO(TV), KMAU(TV), KIKU, KHON-TV, KHAW-TV and KAIH-TV **ARE DISMISSED AS MOOT**.

FEDERAL COMMUNICATIONS COMMISSION

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