

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

In the Matter of)
)
Requests For Further Extension of the)
November 1, 2000, Digital Television)
Construction Deadline)

ORDER

Adopted: March 28, 2001

Released: April 5, 2001

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

1. The Commission has before it twenty-three requests submitted by television stations seeking extensions of the deadline for construction of their digital television (DTV) facilities pursuant to Section 73.624(d)(3)(iii) of the Rules.¹ Canyon Area Residents for the Environment (CARE) opposed the extension requests of the four Denver television stations; otherwise the requests are unopposed. For the reasons set forth below, we grant all of the requests and, depending on the facts and circumstances of each case, we extend the construction deadline to either three months or six months from the release date of this order.

I. Background

2. In the *Fifth Report and Order* in our DTV rulemaking proceeding, we found that DTV offers the opportunity for broadcast television service to meet the competitive and other challenges of the twenty-first century.² In adopting our DTV rules, we sought to strengthen, not hamper, the possibilities for broadcast DTV's success. We established two goals for DTV implementation – to promote and preserve free, universally available, local broadcast television in a digital world and to promote spectrum efficiency and rapid recovery of spectrum. With respect to our second goal, we determined that the more quickly that broadcasters and consumers move to digital, the more rapidly spectrum can be recovered and then be reallocated or reassigned, or both.

3. To further the rapid implementation of DTV, we adopted an aggressive DTV construction schedule. We determined that television stations affiliated with the ABC, CBS, Fox and NBC television networks would be required to build DTV facilities in the ten largest

¹ 47 C.F.R. § 73.624(d)(iii). A complete list of all stations seeking extensions and their extended construction deadline is included in Appendix A to this Order.

² Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 FCC Rcd 12809, 12810 (1997) (*Fifth Report and Order*). We found such other challenges to be preserving free, widely accessible programming that serves the public interest and ensuring the ability of broadcasters to adapt their service to meet demand. *Id.* at 12812.

television markets by May 1, 1999. Stations affiliated with ABC, CBS, Fox and NBC in the television markets eleven through thirty were required to construct their DTV facilities by November 1, 1999. All other commercial stations are required to construct their DTV facilities by May 1, 2002, and all noncommercial stations must construct their stations by May 1, 2003.

4. We adopted this staggered approach because we found that the most viewed stations in the largest television markets can be expected to lead the transition to DTV and that these stations were better situated to invest the capital necessary to establish the first DTV stations. We also found that smaller market stations could benefit from the experience gained by the larger market stations and our staggered approach would keep conversion costs down for smaller market stations as equipment costs decrease. Finally, we concluded that our tiered approach would ensure that DTV quickly reaches a large percentage of U.S. television households while placing requirements on a relatively small number of stations.

5. Our records indicate that, in the top ten television markets, there are forty stations affiliated with the top four television networks and of these forty stations, thirty-six have constructed and are on the air with DTV facilities. Only four stations are not on the air with their authorized DTV facilities, and two of these stations have been granted Special Temporary Authorizations (STA) to operate temporary facilities. In television markets eleven through thirty, there are seventy-nine television stations affiliated with the top four television networks and of these seventy-nine stations, sixty stations are on the air with DTV facilities. The remaining nineteen stations are not on the air with their authorized DTV facilities, and five of these stations have been granted STAs to operate temporary facilities.

II. Discussion

6. In sum, there has been substantial progress in the implementation of digital television service in the top thirty markets. As for those stations requesting additional time to complete construction of their DTV facilities in these markets, we find that all of these stations have justified their extension requests. Therefore, we grant all of the requests and extend the DTV construction deadlines to either three months or six months from the release date of this order, depending on the facts and circumstances in each case.

7. While we grant these extension requests, we take this opportunity to remind television stations that implementation of DTV in the top television markets is key to the success of a nationwide system of DTV. In the *Fifth Report and Order*, we found that expedited construction will promote DTV's competitive strength internationally, as well as domestically.³ We also determined that rapid build-out would ensure that the recovery of broadcast spectrum for future uses occurs as quickly as possible. We continue to expect stations seeking extensions to submit detailed justifications as to why they have been unable to complete construction of their facilities. As before, each station will be required to demonstrate that its failure to construct has been due

³ *Fifth Report and Order* at 12842. We found that the U.S. could abdicate its role as the world's DTV technological leader absent rapid DTV roll out. *Id.* at 12842-3.

to circumstances that were either unforeseeable or beyond its control and that the station has taken all reasonable steps to resolve the problem expeditiously. We continue to expect such requests to be supported by documentation, and for stations to be able to demonstrate each step that was taken to complete construction or to outline each unforeseeable or uncontrollable delay or event. Only when we receive a fully supported request, will we allow an additional extension of the construction period.

A. Three-Month Extension

8. Four television stations represented in their extension requests that they were very close to completing construction of their DTV facilities, but that a short extension was necessary in order for the process to be successfully completed. These stations cite to last-minute unforeseeable and uncontrollable construction delays that prevented the construction of their facilities by the November 1, 2000, deadline. For example, WNBC-DT and WABC-DT, New York, New York, which are working on a collocated DTV facility on the World Trade Center, experienced a delay in the arrival of their antenna and related transmission equipment. Installation was further delayed by a shortage of skilled electricians to perform the work. In addition, WESH-DT, Daytona, Florida, and WKMG-DT, Orlando, Florida, are proposing a collocated tower and have experienced delays concerning the proper strength of the structure and its adherence to strict safety standards. All of these stations represent they will need only a short extension to complete construction of their facilities and they predict that construction will be completed in the next thirty to ninety days. Therefore, we grant these stations an extension to three months from the release date of this order.

B. Six-Month Extension

9. Among the remaining nineteen stations requesting additional time to complete their DTV construction, ten stations were unable to complete construction due to unusual circumstances that were clearly beyond their control. None of these stations are certain when they will be able to complete the construction of their DTV stations, but all appear to be taking reasonable steps to resolve their unique problems. For example, WVIT-DT, New Britain, Connecticut, and WTIC-DT, Hartford, Connecticut, have been unable to secure local zoning approval to install their DTV facilities. WTIC-DT and WFSB-DT, Hartford, Connecticut, also cite to the problems that television stations in Connecticut have been having in implementing DTV. As we recognized in our *Sixth Memorandum Opinion and Order* in the DTV rulemaking, the Northeast Corridor is particularly congested and a number of DTV allotments are not ideal.⁴ WTIC-DT and WFSB-DT are parties to a petition for rulemaking seeking to resolve these problems.⁵ WTVJ-DT, Miami, Florida, is involved in a similar pending rulemaking proceeding

⁴ Advanced Television Systems and Impact Upon Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of Sixth Report and Order*, 13 FCC Rcd 7418, 7436 (1998).

⁵ The rulemaking proposal involves interference to multiple licensees/permittees in the area which must be resolved before a *Notice of Proposed Rulemaking* can be released. The parties have been informed of these problems.

which would result in the change of its DTV allotment.⁶ Until such proceedings are completed and these stations know their outcome, they maintain that they are unable to begin construction of their DTV facilities. KCPQ-DT, Tacoma, Washington, cites to problems that it had obtaining Federal Aviation Administration (FAA) and Canadian clearance for its proposed DTV site. Further, WBBM-DT, Chicago, Illinois, explains that it constructed its DTV station, but when it began operating there was unforeseen interference to cable television operators and their subscribers. Therefore, WBBM-DT was forced to terminate its DTV operation. WBBM-DT is currently working with another television station on a channel swap that it believes will resolve this problem. The remaining stations are Denver television stations KUSA-DT, KMGH-DT, KCNC-DT, and KDVR-DT all of which represent that they have been unable to complete construction of their DTV facilities on Lookout Mountain, outside of Denver, due to a local tower siting dispute that is the subject of another proceeding currently pending before the Commission.⁷ Canyon Area Residents for the Environment (CARE) opposes the extension requests raising matters similar to those pending before us in the other proceeding. We deny CARE's request to deny the Denver DTV extension requests and rescind the DTV construction permits, and we defer consideration of the matters raised by CARE to that other pending proceeding. Our action today is without prejudice to whatever action we may take in that proceeding.

10. These were the types of unusual cases that we envisioned when we announced that we would permit extensions of our DTV construction schedule. In each case, the station has been unable to complete construction and/or continue operation of its DTV station due to circumstances that were clearly unforeseeable and beyond its control. Therefore, we grant these stations an extension to six months from the release date of this order in order to complete their DTV facilities.

11. Nine television stations also have experienced unforeseeable construction delays that have prevented them from completing construction of their DTV facilities, albeit the causes of the delays are not as extreme as in the above-outlined cases. For example, KOVR-DT, Stockton, California, has been unable to secure a transmitter to accommodate its proposed transmitting power. KOVR-DT ordered the high power transmitter from the manufacturer but delivery has been delayed due to a manufacturing backlog. Minneapolis-St. Paul television stations WCCO-DT, KSTP-DT, WFTC-DT, and KARE-DT, all cite to unforeseeable and uncontrollable, weather-related construction delays and unexpected work stoppages that have delayed the construction of a collocated tower in the City of Shoreview, Minnesota. WFOR-DT, Miami, Florida, has been

⁶ See Amendment of Section 73.622(b) of the Commission's Rules – Digital Television Broadcast Stations (Miami, Florida), MM Docket No. 00-125, *Notice of Proposed Rulemaking*, 15 FCC Rcd 12648 (2000).

⁷ See, "FCC To Seek Comments on a Letter From the Advisory Council on Historic Preservation Relating to Communications Transmission Facilities Located at Lookout Mountain, CO," *Public Notice*, DA 99-1211, released June 23, 1999; and In the Matter of Canyon Area Residents for the Environment Request for Review of Action Taken Under Delegated Authority on a Petition for an Environmental Impact Statement, *Memorandum Opinion and Order*, 14 FCC Rcd 8152 (1999).

involved in protracted litigation concerning access to its proposed tower. KTVT-DT, Fort Worth, Texas, experienced a last minute mechanical failure of its supporting structure which resulted in the structure having to be completely remanufactured. KOIN-DT, Portland, Oregon, and WFTV-DT, Orlando, Florida, had to make unexpected changes to their proposed facilities and were recently granted modified construction permits.

12. We find that these stations have been diligent in seeking to construct their DTV facilities and only because of unforeseeable or uncontrollable delays were they unable to complete construction of the facilities proposed in their original construction permits. None of these stations appear to be able to resolve their problems by the earlier three-month extension deadline. Therefore, we grant an extension to these stations to six months from the release date of this order.

13. ACCORDINGLY, IT IS ORDERED That, pursuant to Section 73.624(d)(3)(iii) of the Commission's Rules, 47 C.F.R. § 73.624(d)(3)(iii), the requests of television stations set forth in Appendix A of this Order for extension of the November 1, 2000, DTV construction deadline ARE GRANTED and the DTV construction deadline is extend to the respective dates set forth in Appendix A.

14. IT IS FURTHER ORDERED That the petition to deny filed by Canyon Area Residents for the Environment IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A – Stations Seeking an Extension of their DTV Construction Deadline

Call Sign	City	ST	Reason for Delay	Length - Extension
WABC-DT	New York	NY	Construction and equipment ordering delays.	3 months
WNBC-DT	New York	NY	Operating with STA. Construction & equipment ordering delays.	3 months
WBBM-DT	Chicago	IL	Interference to cable systems. Attempting channel swap.	6 months
KTVT-DT	Dallas	TX	Operating with STA. Construction delays.	6 months
KCPQ-DT	Tacoma	WA	Operating with STA. Lack of FAA approval.	6 months
KSTP-DT	St. Paul	MN	Operating with STA. Construction delays.	6 months
WCCO-DT	Minneapolis	MN	Construction delays.	6 months
WFTC-DT	Minneapolis	MN	Zoning and construction delays.	6 months
KARE-DT	Minneapolis	MN	Construction delays.	6 months
WFOR-DT	Miami	FL	Local litigation.	6 months
WTVJ-DT	Miami	FL	Pending rulemaking to change DTV allotment.	6 months
KMGH-DT	Denver	CO	Operating with STA. Zoning delays.	6 months
KCNC-DT	Denver	CO	Zoning delays.	6 months
KDVR-DT	Denver	CO	Zoning delays.	6 months
KUSA-DT	Denver	CO	Zoning delays.	6 months
KOVR-DT	Stockton	CA	Operating with STA. Equipment ordering delay.	6 months
WFTV-DT	Orlando	FL	Construction delays.	6 months
WKMG-DT	Orlando	FL	Tower safety issues.	3 months
WESH-DT	Daytona Beach	FL	Tower safety issues.	3 months
KOIN-DT	Portland	OR	Construction delays.	6 months
WFSB-DT	Hartford	CT	Operating with STA. Interference, zoning and other delays.	6 months
WTIC-DT	Hartford	CT	Zoning delays and pending channel change rulemaking.	6 months
WVIT-DT	New Britain	CT	Zoning delays.	6 months

Dissenting Statement of Commissioner Harold W. Furchtgott-Roth**DTV Extension Order**

I dissent from this Order because the Commission has given the affected television stations an unreasonably short period of time in which to construct their digital facilities. The Commission, I believe, has not taken Acts of God or other unforeseen circumstances into adequate consideration here. Such factors as zoning approvals, construction crew shortages, and inclement weather, are not conducive to government mandated timetables, and in any instance, are not within the control of the broadcast community.

I find that a longer extension, perhaps up until May 2002, should have been chosen instead. This mandate would have allowed the broadcast industry to save time and money by mitigating the need to file further extension requests. Administrative efficiency would also have been served because the Commission would not have to waste valuable staff time to prepare and review future extension Orders. In any instance, the grant of a longer extension would not harm the public as few television households now have digital television sets.

Finally, I note that the impracticable DTV build-out schedule is the result of Soviet-style central planning implementing by past administrations. Marketplace forces and all other reasonable considerations normally observed in the development of new technologies were cast aside in the long march toward industrial policy. DTV is a wondrous innovation and it should evolve on its own terms and timetables, not those set by the government.