

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

In the Matter of)
)
Requests For Further Extension of the)
Digital Television Construction Deadline)

ORDER

Adopted: January 30, 2003

Released: February 6, 2003

By the Commission: Commissioner Copps issuing a statement.

1. The Commission has before it eight 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 The requests are unopposed. For the reasons set forth below, we grant the requests and we extend the DTV construction deadline to six months from the release date of this order.

I. Background

2. To further the rapid implementation of a nationwide system of DTV, we adopted in 1997 an aggressive DTV construction schedule.² 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 television markets by May 1, 1999. Stations affiliated with these networks in television markets eleven through thirty were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations must construct their stations by May 1, 2003.

3. Earlier this year, we considered the extension requests of those network-affiliated television licensees in the top thirty markets that had not constructed their DTV facilities.³ We granted nine stations additional time to construct their DTV facilities. Of those nine licensees, one (KTVT-DT, Fort Worth, Texas) successfully completed construction of its facilities, leaving

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 See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 12809 (1997) (*Fifth Report and Order*).

³ See Remedial Steps For Failure to Comply With Digital Television Construction Schedule, 17 FCC Rcd 9962 (2002).

eight stations to seek an additional extension. Therefore, in the top thirty television markets, one hundred and eleven of the one hundred nineteen network-affiliated television stations have successfully completed construction of their authorized DTV facilities.⁴

II. Discussion

4. WTIC-DT and WFSB-DT, Hartford, Connecticut cite to the ongoing problems that television stations in Connecticut have been having in implementing DTV in the Northeast Corridor, which we have previously recognized as being particularly congested.⁵ WTIC-DT's DTV allotment (Channel 5) is the subject of an ongoing rulemaking wherein WNYW(TV), New York, New York, is seeking to substitute Channel 31 for DTV Channel 5 for WTIC-DT.⁶ While WTIC-DT is not opposed to this change, WFSB-DT is opposed because it believes that the change will have a detrimental effect on its DTV operation. Until that rulemaking is completed, both WTIC-DT and WFSB-DT maintain that it is impossible to inaugurate full-service DTV operation because construction is dependent on the outcome of that proceeding.

5. WTIC-DT, Hartford, Connecticut also states that it has been unable to obtain local zoning approval for its proposed new 2349 foot DTV tower. As an alternative, however, WTIC-DT has completed technical evaluations on its existing NTSC tower and has determined that it can support the addition of a DTV antenna with additional strengthening work. WTIC-DT states that it will begin the strengthening work, as soon as the aforementioned rulemaking is complete.

6. WVIT-DT, New Britain, Connecticut, states that its original application for zoning variance for modifications to its existing tower was also denied and it appealed that decision to the Connecticut Superior Court. Subsequently, WVIT-DT engaged a consulting engineer and revised its proposed DTV facilities in order to obtain the necessary local zoning approval. That approval was obtained in March 2002, but a neighboring land owner challenged the local zoning approval, further delaying WVIT-DT's construction. WVIT-DT states that it has entered into negotiations with the land owner and hopes to reach a settlement. Meanwhile, WVIT-DT has obtained the necessary equipment for its DTV facilities and is continuing the construction of its DTV facilities. Assuming a successful settlement with the land owner, WVIT-DT predicts that it will be able to commence operation of its DTV facilities by May 2003.

⁴ Two network-affiliated television stations in New York City (WABC-DT and WNBC-DT), as well as three other DTV stations (WWOR-DT, WPIX-DT and WNET-DT) in that market were taken off the air as a result of the September 11, 2001 attack on the World Trade Center and have not yet rebuilt their DTV facilities. These five stations had completed construction of their DTV facilities by their applicable DTV construction deadlines (as extended) and are now, with the exception of WWOR-DT, off the air. WWOR-DT is sharing an antenna with WNYW-DT on the Empire State Building.

⁵ Advanced Television Systems and Impact Upon Existing Television Broadcast Service, 13 FCC Rcd 7418, 7436 (1998).

⁶ See Amendment of Section 73.622(b) of the Commission's Rules – Digital Television Broadcast Stations (Hartford, Connecticut), 16 FCC Rcd 18842 (2001).

7. WTVJ-DT, Miami, Florida, has been involved in a pending rulemaking proceeding which would result in the change of its DTV allotment.⁷ That rulemaking, however, was completed with the issuance of a Report and Order on November 15, 2002,⁸ and WTVJ-DT must file no later than January 14, 2003, an application for DTV construction permit. WTVJ-DT has pledged to begin construction immediately upon issuance of its DTV construction permit.

8. WBBM-DT, Chicago, Illinois, explains that it constructed its DTV station, but when it began operating there was unforeseen interference to local cable television service. Therefore, WBBM-DT was forced to terminate its DTV operation. In December 2001, WBBM-DT began working on low power broadcasts as part of a coordinated effort with the owner of the cable system to resolve customer complaints on a phased basis. WBBM-DT subsequently decided to move forward and begin DTV broadcasting at or near full power from its DTV antenna location on the John Hancock Center Building in Chicago. That location, however, is also the location of its analog facilities and those facilities have been undergoing modification. The analog site modifications have delayed implementation of WBBM-DT's full power DTV operations. WBBM-DT anticipates completion of the analog modifications by the end of 2002. Once those modifications are completed, WBBM-DT states that it will complete its DTV facilities and file an application for a DTV license.

9. The Denver television stations - KUSA-DT, KMGH-DT and KCNC-DT - all represent that they have been unable to complete construction of their DTV facilities on Lookout Mountain, outside of Denver, due to an ongoing unresolved local tower siting dispute. These three stations are part of a consortium seeking to build a new tower for their DTV facilities on Lookout Mountain. The local county commissioners denied their initial proposal. The group then worked with an engineer to devise a tower plan that would be both feasible and would satisfy the local authorities. In June 2002, the group submitted this new plan and it is currently awaiting local review. A decision is anticipated in early 2003. Assuming that approval is obtained, and the Commission subsequently grants a modification of their construction permit, the group expects to be able to complete construction of their DTV facilities by 2004.

10. We find that, in each of these cases, the television licensee made reasonable and diligent efforts to construct their authorized facilities, but that each encountered delays that were unforeseeable or beyond their control and that these delays prevented timely construction of their DTV facilities. 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. 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 the television stations set

⁷ See Amendment of Section 73.622(b) of the Commission's Rules – Digital Television Broadcast Stations (Miami, Florida), 15 FCC Rcd 12648 (2000).

⁸ Amendment of Section 73.622(b) of the Commission's Rules – Digital Television Broadcast Stations (Miami, Florida), *Report and Order*, DA 02-3092, (rel. November 15, 2002).

forth in Appendix A of this Order for extension of the digital television construction deadline ARE GRANTED and the digital television construction deadline IS EXTENDED to six months from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

Call Sign	City	ST	Reason for Delay	Length - Extension
WBBM-DT	Chicago	IL	Interference to cable.	6 months
WTVJ-DT	Miami	FL	Pending rulemaking.	6 months
KMGH-DT	Denver	CO	Zoning delays.	6 months
KCNC-DT	Denver	CO	Zoning delays.	6 months
KUSA-DT	Denver	CO	Zoning delays.	6 months
WFSB-DT	Hartford	CT	Pending rulemaking.	6 months
WTIC-DT	Hartford	CT	Zoning delays and pending rulemaking.	6 months
WVIT-DT	New Britain	CT	Zoning delays.	6 months

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Requests for Further Extension of the Digital Television Construction Deadline

As I have previously stated, I am committed to aggressively and responsibly promoting the rollout of digital television. I am therefore extremely reluctant to grant extensions to our DTV construction deadlines. However, the eight stations before us here have presented the Commission with satisfactory individual explanations for their need for further extensions, and it appears that the delays to date have not been due to circumstances within the control of the licensees. I expect that the remaining issues preventing completion of construction will be resolved promptly, and I continue to hope that, increasingly, the Commission will be able to focus its energies on positive news on the DTV rollout rather than on more delays.