

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

In the Matter of)
)
DTV Build-out)
)
Requests for Extension of the)
Digital Television Construction Deadline)
)
Commercial Television Stations)
With May 1, 2002 Deadline)

ORDER

Adopted: June 2, 2004

Released: June 10, 2004

By the Commission:

1. The Commission has before it 35 applications submitted by commercial television stations seeking extensions of the May 1, 2002, deadline for construction of their digital television (DTV) facilities pursuant to Section 73.624(d)(3)(iii) of the Commission's rules.¹ The applications are unopposed. For the reasons set forth below, we grant the applications and extend the DTV construction deadline for 29 stations to six months from the release date of this Order. We admonish 2 stations for their continuing failure to timely construct, deny their applications, and afford them six months from the release date of this Order to comply with the DTV construction rule. The stations will also be subject to the remedial measures for DTV construction we have previously adopted.² The DTV construction deadline for the remaining 4 "satellite" stations is deferred pending the outcome of the DTV periodic review proceeding.³

I. BACKGROUND

2. To further the rapid implementation of a nationwide system of DTV, we adopted in 1997 an aggressive DTV construction schedule.⁴ 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

¹ 47 C.F.R. § 73.624(d)(iii). A previous order considered the DTV extension applications of 141 stations. See *DTV Build-out*, FCC 03-250, released October 23, 2003 (*DTV Extension Order I*).

² See Remedial Measures For Failure to Comply with Digital Television Construction Schedule, *Report and Order*, 18 FCC Rcd 7174 (2003) (*Remedial R&O*).

³ A complete list of all stations granted six months extensions and the satellite stations is included in Appendix A to this Order. Those stations receiving admonishments are included in Appendix B.

⁴ See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 12809 (1997) (*Fifth Report and Order*).

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 were to have constructed their stations by May 1, 2003.

3. A total of 1,629 television stations in all markets (representing approximately 97% of all stations) have been granted a DTV construction permit or license. There are a total of 1,377 stations now on the air broadcasting a digital signal, 628 with licensed facilities or program test authority and 749 operating pursuant to special temporary authority (“STA”) or experimental DTV authority (representing approximately 80% of all stations).

4. In the top thirty television markets, all 119 network-affiliated television stations are on the air in digital, 110 with licensed DTV facilities or program test authority and 9 with STAs. In markets 1-10, of the 40 network affiliates due to be on the air by May 1, 1999, all 40 are on the air with a digital signal. In markets 11-30, 72 of 79 network affiliate stations required to be on the air by November 1, 1999, have constructed their licensed DTV facilities. Seventy-seven of these stations now are on the air. Three stations have been granted additional time to complete construction of their digital facilities.

5. There were 1,196 commercial television stations due to commence digital broadcasts by May 1, 2002, and 1,009 of these stations are currently broadcasting a digital signal. In addition, 251 of 373 noncommercial educational television stations, who were due on the air May 1, 2003, are now airing digital broadcasts.

6. The commercial stations in this proceeding were required to construct their DTV facilities by May 1, 2002, and have been granted two previous extensions by the staff. Because these are the third extension requests by these stations, they must be considered by the Commission.⁵

II. DISCUSSION

A. Extensions Based On Satellite Status

7. There are 4 stations seeking an extension that are “satellites.” Satellites are full power terrestrial broadcast stations authorized under Part 73 of the Rules to retransmit all or part of the programming of a parent station that typically is commonly owned. In the *DTV Periodic NPRM*, we requested comment on whether the public interest would be served by allowing such stations to turn in their digital authorization and “flash cut” to DTV transmission at the end of the transition period.⁶ In effect, this would relieve satellite stations of the requirement that they meet an earlier DTV construction deadline.

8. In the *DTV Extension Order I*, we deferred the DTV construction deadlines of satellite stations pending the outcome of the DTV periodic review proceeding.⁷ We grant the same relief to the satellite stations before us now.

⁵ See 47 C.F.R. § 73.624(d)(iii).

⁶ See Second Periodic Review of Commission’s Rules and Policies Affecting the Conversion to Digital Television, 18 FCC Rcd 1279, 1326 (2003) (*DTV Periodic NPRM*).

⁷ The satellite stations are denoted in Appendix A.

B. Stations Granted Six Month Extensions

9. *Stations Affected By the September 11th Attack in New York City.* A number of television stations were directly or indirectly affected by the September 11, 2001, terrorist attack in New York City including WFUT-DT, Newark, New Jersey. The station was close to finalizing a lease to place its DTV facilities on the Empire State Building at the time of the attack. Following the attack, lease negotiations were hampered by a number of stations with facilities on the World Trade Center that were destroyed attempting to place their facilities on the Empire State Building. WFUT-DT subsequently identified an alternative site for a temporary DTV facility. The station obtained an STA to operate from that site and is working to install its equipment. The station is also working to complete a lease on the Empire State Building for its permanent DTV facility.

10. The September 11th terrorist attack constitutes an uncontrollable and unforeseeable event warranting extension of DTV construction deadlines for the affected stations. We find that the station affected by the September 11th attack has taken reasonable steps to recover from that disaster and to complete construction of its DTV facilities.

11. *Stations with Other Uncontrollable or Unforeseeable Delays.* A number of stations have encountered unforeseen or uncontrollable delays concerning the construction of their DTV facilities including late delivery of equipment, unexpected equipment failures, natural disasters, and weather related delays.

12. KOLN-DT, Lincoln, Nebraska, experienced a delay in the construction of its tower when the construction company's sub-contractor began using defective equipment. This delayed completion of the tower. Subsequently, it was discovered that the steel for the tower had not been measured correctly by the site engineer and had to be re-cut at the factory. The station is awaiting delivery of the re-cut steel and expects to be able to complete construction within a week of delivery.

13. WAWD-DT, Fort Walton Beach, Florida, has completed construction of its facility but it is awaiting the installation of electricity to a shared transmitter site by the local power company. The company informed the station that it had to consolidate the electrical service panels used by each of the occupants of the transmitter building. This resulted in a delay in the installation of electricity to the site. The station states that it will use its best efforts to begin operating as soon as the installation is completed.

14. WJHG-DT, Panama City, Florida, went through a rulemaking to change its DTV channel. In October 2002, the station received a grant of its modified construction permit and began to construct its facilities. The station retained a company to review the structural integrity of its tower. Subsequently, the company went out of business, leaving the station without an integrity study. The station hired a new company that began studying its tower. Following completion of the study, the station contacted a tower construction company and is awaiting a bid. Upon receipt of the bid, the station states that it will move quickly to bring DTV service to its community.

15. KXLA-DT, Rancho Palos Verdes, California, is a member of a consortium of stations seeking to build a new tower structure on Mt. Wilson, near Los Angeles, California. The consortium experienced an unforeseen technical problem with the proposed antenna that had to be reconfigured to increase replication. This required modifying the stations' DTV construction permits. The consortium is working to resolve certain technical and legal issues surrounding the proposed modification.

16. We recognize that the siting of DTV facilities remains a challenge for many broadcasters. Construction and tower siting delays of the type outlined above qualify as uncontrollable and unforeseeable delays that warrant extension of these stations' DTV construction deadlines.

17. *Stations Awaiting Commission Action.* The following stations are either awaiting final processing on modification applications or requests for STA, or they only recently received a grant of a modification application or STA and the station has had insufficient time to complete construction:

KFQX-DT, Grand Junction, Colorado
KRDO-DT, Colorado Springs, Colorado
KREG-DT, Glenwood Springs, Colorado
KREX-DT, Grand Junction, Colorado
KREY-DT, Montrose, Colorado
KTBU-DT, Conroe, Texas
WDHS-DT, Iron Mountain, Michigan
WLOV-DT, West Point, Mississippi
WMDN-DT, Meridian, Mississippi
WUVC-DT, Fayetteville, North Carolina

In some cases, applications were filed recently because the station discovered that changes need to be made to its proposed DTV facilities after it began construction.

18. KYES-DT, Anchorage, Alaska, is a member of a coalition that sought Commission approval for a comprehensive Master Plan that involved a complicated series of interrelated digital and analog channel changes. The coalition requested that the plan be dismissed in February 2003. The members have subsequently sought separate DTV channel changes in a rulemaking initiated on February 20, 2003.

19. The pendency of Commission proceedings is the type of matter outside of the control of a station that warrants allowing additional time for the construction of DTV facilities. The Commission staff has given priority processing to rulemakings and applications involving DTV stations, however, many of the above proceedings involve complicated technical issues (such as interference and international coordination) that must be resolved before they can be approved. We find that in each of the above cases the stations took the necessary steps to complete the Commission proceeding, but were unable to do so prior to their DTV construction deadline.

20. *Financial Problems.* In our *DTV MO&O*, we recognized that some stations may not be in the financial position to provide DTV service by the May 1, 2002, deadline.⁸ We announced a policy of allowing stations to seek an extension to their DTV construction deadline based upon the fact that the cost to construct their facility may exceed the station's financial resources. A number of stations have sought extensions based upon their financial difficulties.

21. The licensee of full-service station KVLV-DT, Fargo, North Dakota, demonstrated that financial constraints have prevented the construction of the DTV facilities of this station. The licensee acquired the station in November 2002 from another owner with financial problems. Under its loan agreements, the licensee is limited in the amount of money it may expend on DTV construction. The licensee provided a timetable for this station and has made progress towards completion of construction.

22. The licensee of KMLM-DT, Odessa, Texas; KPCB-DT, Snyder, Texas; KPTB-DT, Lubbock, Texas; and KRPV-DT, Roswell, New Mexico; previously demonstrated that financial hardship was preventing the timely construction of the DTV facilities for these stations. The licensee provided a timetable for construction of minimum-power STA facilities for the stations. Subsequently, in the summer of 2003, the licensee engaged in a fund-raising drive that raised more money than it had expected. The licensee states that it now has sufficient funds to construct full-power DTV facilities for each of its stations. It has revised its construction timetable accordingly. Although the revised construction timetable will result in a further delay in the construction of the stations' DTV facilities, we believe the public interest warrants an extension because it will result in the initiation of full power DTV service to these communities.

23. KPVI-DT, Pocatello, Idaho, has also experienced financial difficulties that have delayed the construction of its DTV facilities. Despite this problem, the station has ordered its equipment and, once delivery is made, it states that it will complete construction of a low-power STA facility.

24. The licensee of WDFX-DT, Ozark, Alabama, has demonstrated financial inability to construct the DTV facilities for this station. The licensee has filed an application to assign the station to another owner. Meanwhile, the licensee has continued to pursue DTV construction. It has ordered the DTV equipment and, assuming it is still the licensee, it will go forward with installation upon delivery.

25. WYLE-DT, Florence, Alabama, continues to experience financial hardship. The station is continuing to pursue operation of a minimum power DTV facility despite losses for the first six months of 2003. The station has purchased the antenna and transmission line for its minimum power facility. It is now working on acquiring the remaining equipment necessary to begin operations.

26. The licensee of WEUX-DT, Chippewa Falls, Wisconsin; and WLAX-DT, LaCrosse, Wisconsin, has also demonstrated that financial difficulties have prevented construction of the stations' DTV facilities. Despite financial restrictions, the licensee has completed construction of the DTV facilities for its five other stations and is continuing to pursue construction of these two remaining DTV stations.

⁸ See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 16 FCC Rcd 20594, 20610-12 (2001) (*DTV MO&O*).

27. WFLI-DT, Cleveland, Tennessee, continues to experience financial hardship. The station is continuing to raise funds, has ordered equipment, and is following a DTV construction schedule with slight modifications.

28. The licensee of WFXU-DT, Live Oak, Florida; and WTLH-DT, Bainbridge, Georgia, has been unable to generate sufficient funds to complete construction of these stations' DTV facilities. The licensee completed construction of two other DTV facilities in 2003 and is committed now to completing the construction of these DTV stations.

29. We find that these stations have met the requirements for further extension of the DTV construction deadline as stations experiencing financial hardships. The stations have provided documentary evidence to establish that the "costs of meeting the minimum build-out requirements exceed the station's financial resources."⁹ Despite these setbacks, the stations have taken steps to further their DTV construction.

30. In conclusion, we find that each of these stations made reasonable and diligent efforts to construct their authorized DTV facilities, but that each encountered delays that were unforeseeable or beyond their control, thus preventing timely construction. Therefore, we grant these stations an extension to six months from the release date of this Order to complete their DTV facilities.

31. Although we grant these extension requests, we take this opportunity to remind television stations that timely implementation of DTV is the key to the success of a nationwide DTV system. We have found that expedited construction promotes DTV's competitive strength internationally, as well as domestically. We have also determined that rapid build-out ensures 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 to financial hardship, or 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.

C. Stations Admonished For Failure To Timely Construct

32. In our *Remedial DTV R&O* we announced a series of measures that we would employ whenever we determined that a television station had failed to complete construction of its DTV facilities and had failed to adequately justify an extension of its DTV construction permit.¹⁰ Upon examination of their extension applications, we have determined that 2 stations have not justified their failure to complete construction of their DTV facilities.

⁹ *Id.*

¹⁰ *See DTV Remedial R&O, supra.*

33. WBHQ-DT, Sumter, South Carolina, and WCOV-DT, Montgomery, Alabama, provided little support for their third extension requests. Little explanation was given for their inability to place their stations into operation since the grant of their last extension request. Although the stations claim that there was a delay in construction, they provided little or no support for their contentions nor did they explain what steps they had taken to reduce the delay. Stations may not rely on unsupported delays to justify an extension.

34. These stations have failed to adequately demonstrate that their inability to complete construction of their DTV facilities in a timely fashion was due to circumstances that were unforeseeable or beyond their control. The stations also did not adequately address whether they had taken all necessary steps to further their DTV construction. We, therefore, deny these stations' requests for an unqualified extension and admonish them for their continuing failure to comply with their DTV construction obligation. Each station is provided six months to comply with the DTV construction rule. Each station must submit a report (in letter form with the Secretary's office) within thirty days of the release date of this Order outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Sixty days after the initial report, the stations must submit reports (once again in letter form with the Secretary's office) detailing their progress on meeting their proposed construction milestones and justifying any delays they have encountered. If at any time during this six-month period, the stations fail to comply with the reporting requirements or fail to demonstrate that they are taking all reasonable steps to complete construction, or we otherwise find that the stations have acted in bad faith, we will consider the imposition of additional sanctions.

35. These stations should understand that, as a result of being placed in the remedial program, the burden will be greater to demonstrate the propriety of any failure to complete their DTV construction. If at the end of the six-month period, the station has not completed construction, we will issue a Notice of Apparent Liability unless the station can demonstrate that its inability to complete construction was due to extraordinary and compelling circumstances, such as a new, unanticipated, intervening event. Stations will be required to fully detail and document the delays they have experienced and must show that they took every reasonable step to prevent such delays.

III. CONCLUSION

36. 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 applications of the television stations set forth in Appendix A of this Order (except for the stations denoted as satellite stations) 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. The digital television construction deadline for those stations denoted as satellite stations in Appendix A of this Order IS DEFERRED pending the outcome of the Commission's rulemaking proceeding in MB Docket No. 03-15.

37. IT IS FURTHER ORDERED, That the television stations set forth in Appendix B of this Order ARE ADMONISHED for their continuing failure to comply with their DTV construction obligations, that their applications for extension of their DTV construction deadline ARE DENIED, and that these television stations ARE AFFORDED until six months from the release date of this Order to come into compliance with the Commission's DTV construction rule. Each station must submit a report (in letter form with the Secretary's office) within thirty days of the release date of this Order outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones.

Sixty days after the initial report, the stations must submit reports (once again in letter form with the Secretary's office) detailing their progress on meeting their proposed construction milestones and justifying any delays they have encountered.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Stations Granted Sixth-Month Extension
(*): Indicates Satellite Station

CALL	PREFIX	ARN	FAC ID	CH	CITY	ST
KFQX-DT	BEPCDT	20030930ART	31597	15	GRAND JUNCTION	CO
KMLM-DT	BEPCDT	20030923ACZ	53541	43	ODESSA	TX
KOLN-DT	BEPCDT	20030509ABB	7890	25	LINCOLN	NE
KPCB-DT	BEPCDT	20030923ACX	77452	10	SNYDER	TX
KPTB-DT	BEPCDT	20030923ACT	53544	25	LUBBOCK	TX
KPVI-DT	BEPCDT	20030711ABR	1270	23	POCATELLO	ID
KRDO-DT	BEPCDT	20030707ADA	52579	24	COLORADO SPRINGS	CO
KREG-DT	BEPCDT	20030930AQJ	70578	23	GLENWOOD SPRINGS	CO
KREX-DT	BEPCDT	20030930ARE	70596	2	GRAND JUNCTION	CO
KREY-DT	BEPCDT	20030930APU	70579	13	MONTROSE	CO
KRPV-DT	BEPCDT	20030923ADG	53539	28	ROSWELL	NM
KTBU-DT	BEPCDT	20030303ACZ	28324	42	CONROE	TX
KVLY-DT	BEPCDT	20030303ADD	61961	58	FARGO	ND
KWNV-DT(*)	BEPCDT	20030711ABC	63846	12	WINNEMUCCA	NV
KXLA-DT	BEPCDT	20030516ACM	55083	51	RANCHO PALOS VERDES	CA
KYES-DT	BEPCDT	20030617ABB	21488	22	ANCHORAGE	AK
WAWD-DT	BEPCDT	20030929AJV	54938	49	FT. WALTON BEACH	FL
WDFX-DT	BEPCDT	20040115ACO	32851	33	OZARK	AL
WDHS-DT	BEPCDT	20030930APY	15498	22	IRON MOUNTAIN	MI
WEUX-DT	BEPCDT	20030910AAH	2709	49	CHIPPEWA FALLS	WI
WFLI-DT	BEPCDT	20030825AKH	72060	42	CLEVELAND	TN
WFUT-DT	BEPCDT	20030314BLX	60555	53	NEWARK	NJ
WFXU-DT	BEPCDT	20030923ADW	22245	48	LIVE OAK	FL
WILF-DT(*)	BEPCDT	20030923ADN	52075	29	WILLIAMSPORT	PA
WIRS-DT(*)	BEPCDT	20030711AAZ	39887	41	YAUCO	PR
WJHG-DT	BEPCDT	20030912ABI	73136	8	PANAMA CITY	FL
WLAX-DT	BEPCDT	20030910AAI	2710	17	LACROSSE	WI
WLOV-DT	BEPCDT	20030930AVD	37732	16	WEST POINT	MS
WMDN-DT	BEPCDT	20030905AAA	73255	26	MERIDIAN	MS
WNNE-DT(*)	BEPCDT	20031121AMB	73344	25	HARTFORD	VT
WTLH-DT	BEPCDT	20030923ADY	23486	50	BAINBRIDGE	GA
WUVC-DT	BEPCDT	20030725ADV	16517	38	FAYETTEVILLE	NC
WYLE-DT	BEPCDT	20031103ACH	6816	20	FLORENCE	SC

APPENDIX B
Stations Admonished For Failure To Timely Construct

CALL	PREFIX	ARN	FIN	CH	CITY	ST
WBHQ-DT	BEPCDT	20030716ACR	40902	38	SUMTER	SC
WCOV-DT	BEPCDT	20030508AAO	73642	16	MONTGOMERY	AL