

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

In the Matter of)	
)	
Third Periodic Review of the)	MB Docket No. 07-91
Commission's Rules and Policies)	
Affecting the Conversion)	
To Digital Television)	

ORDER ON CLARIFICATION

Adopted: May 29, 2008

Released: May 29, 2008

By the Commission:

1. In this Order, the Commission provides clarification in connection with two issues addressed in the Report and Order in the above-captioned proceeding.¹ On December 22, 2007, the Commission adopted a Report and Order in the Third DTV Periodic Review of the progress of the DTV transition.² MSTV and NAB filed a joint petition for reconsideration requesting clarification of two issues in connection with the Order.³

2. First, MSTV/NAB sought clarification that where more than one of the Commission's viewer notification obligations adopted in the Order is triggered, a station may comply with the Commission's requirements through use of a consolidated notification that includes all of the elements required in each of the viewer notification obligations. There was nothing in the Third DTV Periodic to indicate that separate notifications are required by a station that is obligated to inform its viewers of changes in its analog or digital service during the same time frame.⁴ No one filed an opposition to this MSTV/NAB request for clarification. We hereby clarify that we will permit use of such a consolidated notification in circumstances in which the Commission approves service adjustments that overlap in time. Indeed, we believe it could be confusing for viewers to hear multiple notifications that seem to conflict. Stations that prefer to have separate notifications for separate service adjustments may take that approach, as well,

¹ The Commission will address other issues raised in Petitions for Reconsideration in a future order.

² *Report and Order, In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 23 FCC Rcd 2994 (2007) ("*Third DTV Periodic Report and Order*").

³ See Petition for Reconsideration and Clarification of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, filed February 29, 2008 ("*MSTV/NAB Petition*").

⁴ Stations must notify viewers in the following circumstances: (1) when the station is seeking an extension of time to construct post-transition facilities and will not be serving on February 18, 2009 at least the same population that receives the station's current analog TV and DTV service (*see Third DTV Periodic Report and Order*, 23 FCC Rcd at 3033, ¶ 80); (2) when the station will not be serving on February 18, 2009 at least the same population that receives its current analog TV and DTV service and is seeking STA approval to use one of the provisions for a phased transition (*see id.* at 3037-38, ¶ 91); (3) when the station will permanently reduce or terminate analog service thirty days or less prior to the transition deadline (*see id.* at 3044, ¶ 106); (4) when the station is seeking approval for longer term (significantly more than 30 days) reduction or termination of analog service before the transition date (*see id.* at 3050, ¶ 117); and (5) where a station on channels 52-58 seeks to flash cut and to terminate analog or digital service on its out-of-core channel (*see id.* at 3057-58, ¶ 132). In addition, stations seeking to permanently reduce or terminate analog service within 90 days of the transition date have a more streamlined viewer notification procedure (*see id.* at 3058, ¶ 134).

provided they offer clear information to viewers.⁵

3. Second, MSTV/NAB ask that the Commission acknowledge that real-time updates to the Event Information Table (“EIT”) are permissive and not required under the new PSIP standard adopted in the Order.⁶ No party opposed this request for clarification.⁷ While we encourage stations to update the EIT as rapidly as possible when overages or other circumstances result in changes to scheduled programs, our rules and policies do not require that updates be accomplished in real-time. The rule adopted in the Third DTV Periodic incorporates by reference the ATSC PSIP Standard A/65C which does not require real-time updates.⁸ If and when the ATSC PSIP Standard A/65C mandates real-time updates to the EIT, we may revisit this issue.

⁵ We remind stations that Viewer Notification requirements are in addition to and not instead of the consumer education requirements that apply to all full power broadcasters. *See In the Matter of DTV Consumer Education Initiative*, Report and Order, 23 FCC Rcd 4134 (2008) (“*DTV Consumer Education Order*”), recon. order adopted April 23, 2008 (FCC 08-119). *See also Third DTV Periodic Report and Order*, 23 FCC Rcd at 3033, ¶ 80, 3037-38, ¶ 91, 3044, ¶ 106, 3057-58, ¶ 132, and 3058, ¶ 134.

⁶ *See Third DTV Periodic Report and Order*, 23 FCC Rcd at 3079-81, ¶ 185-189; 47 C.F.R. § 73.682(d). Cohen, Dippell and Everist, P.C. also requested clarification regarding whether real-time updates are required under the new PSIP standard. *See Ex Parte Comments of Cohen, Dippell and Everist*, MB Docket 07-91 (dated May 21, 2008).

⁷ John Willkie, doing business as EtherGuide Systems, filed a partial Opposition to the MSTV/NAB Petition. *See Opposition to Petitions for Reconsideration filed by Harris Corporation (Harris), Association for Maximum Service Television (MSTV) and National Association of Broadcasters (NAB), and Cohen, Dippell and Everist, P.C. (CDE) and Clarification of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters*, filed March 10, 2008. Mr. Willkie disputed MSTV’s and Harris Corporation’s contention that PSIP automation equipment is not currently available and other issues raised in the Petitions for Reconsideration filed by MSTV/NAB, Harris and CDE. Willkie acknowledged that the Third DTV Periodic did not require automation systems to comply with the PSIP requirements but opined that use of automation systems would, as a practical matter, facilitate compliance. *Id.* at 1-3. He also advocated Commission waivers for stations that were unable to obtain automation equipment. *Id.* at 6.

⁸ *See Third DTV Periodic Report and Order*, 23 FCC Rcd at 3079, ¶ 185; 47 C.F.R. § 73.682(d). Because real-time updates are not required, there is no need to address the alternative request in MSTV/NAB’s petition for reconsideration for an extension of the effective date for compliance with the rule. *See MSTV/NAB Petition* at 2-3. *See also Harris Corporation, Petition for Reconsideration*, filed February 29, 2008 (requesting one year extension of time). The adoption of the revised PSIP standard will become effective 120 days following Federal Register publication of the *Third DTV Periodic Report and Order*, subject to OMB approval by that date. *See Third DTV Periodic Report and Order*, 23 FCC Rcd at 3088-3089, ¶210. The *Third DTV Periodic Report and Order* was published in the Federal Register on January 30, 2008. *See* 75 Fed. Reg. 5634 (Jan. 30, 2008). OMB approved the PSIP information collection on March 4, 2008 (OMB control number 3060-1104). Thus, the new PSIP rule will become effective May 29, 2008.

4. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(j), 7, 301, 303 and 405 of the Communications Act, 47 U.S.C. §§ 151, 154(i) and (j), 157, 301, 303, and 305, and Sections 1.2 and 1.106 of the Commission's rules, 47 C.F.R. §§ C.F.R. §§ 1.2, 1.106, this Order on Clarification IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary