

February 2009

## DTV Deadline Extension Procedures

As has been widely reported, yesterday Congress passed the “DTV Delay Act” to extend the digital television transition deadline from February 18 to June 12, 2009. While the legislation is not yet effective, signature into law by the President is a virtual certainty, since his administration strongly supported the relief.

This afternoon, the FCC issued a *Public Notice* addressing procedures to be followed by television broadcasters to implement the provisions of the bill. Recognizing that the Act is intended to provide flexibility to stations wishing to transition before the new deadline, the Commission seeks to balance stations’ desire to avoid the added expense of sustaining analog operation for another four months and the extensive preparations they already have made against the goal of giving consumers additional time to prepare by obtaining and installing converters to maintain service to analog receivers.

For stations still terminating analog service on February 17, the Commission will waive the need to obtain special temporary authority and give viewers 60 days’ notification. However, the waiver is subject to the following conditions:

- Notification must be made to the Commission no later than this Monday, February 9. Stations that have already notified the Commission of their intention to terminate on February 17 must do so again.
- To clarify viewer expectations in light of the extension, an accelerated series of announcements must be broadcast 120 times, with at least 30 announcements in prime time, distributed evenly over all days remaining before February 17. These announcements are in addition to all the announcements, programs and other outreach that is already required.
- Stations must also run crawls on their analog channels for seven days beginning February 10 – five minutes every hour, and then ten minutes every hour for the last two days. If crawls are not technically feasible, substitute methods must be used.
- Stations must communicate directly and immediately with cable systems, satellite operators and all other Multichannel Video Programming Distributors that carry their signals to ensure adjustments in their facilities for a smooth transition.
- The Commission reserves the right to limit or reconsider the waiver “if it determines that analog termination on February 17 by a station or group of stations is contrary to the public interest.” The only example it provides is where most or all of the stations intend to terminate service in a market where many viewers are unprepared, in which case the affected stations would have to make a compelling case that economic, technical, contractual or business reasons advance the public interest.
- Although not a requirement, the Commission encourages all stations terminating analog broadcasting on February 17 to continue to broadcast consumer transition information and emergency information on their analog channels for at least two weeks.

No station will be permitted to terminate analog broadcasting between February 18 and March 13. After March 13, the following existing procedures for streamlined notification will apply:

- The Commission must be notified at least 30 days prior to the termination date.
- Viewer notification must also be provided, beginning at least 30 days prior to termination.
- Only digital facilities that are approved for pre-transition service may be used. Thus, stations having a different post-transition facility must obtain special temporary authority to use them before June 12. Otherwise, post-transition facilities may be used only beginning June 13.

Stations that have already terminated analog broadcasting may resume analog transmission but first must obtain special temporary authority based on whether interference will be caused.

Stations that have previously qualified to terminate before February 17 but have not yet done so must notify the Commission by Monday, February 9 whether they intend to comply with their selected date or continue analog programming until a later date.

The Act also authorizes the issuance of replacements for expired coupons to offset the cost of converter boxes. However, extension of the coupon program must await additional budget authority, the amount and form of which are still being discussed.

The bill further requires the FCC within 30 days of enactment to conduct expedited rulemaking and to adopt the necessary orders to implement the new provisions, but today's *Public Notice* presumably is designed to obviate that requirement.

As a final matter, we note that the bill's sponsors reportedly have stated that no further extensions will be made, although until recently the same had been said consistently with respect to the February deadline.

We will keep you advised of further FCC requirements as they are adopted. In the meantime, if you have any questions concerning these matters,, all to alert viewers and the general public to the new deadline and its significance.

We will keep you advised of further FCC requirements as they are adopted. In the meantime, if you have any questions regarding the issues in this Client Alert, please contact either the Womble Carlyle attorney with whom you usually work, or one of the attorneys in our [Communications Law Practice Group](#).

Womble Carlyle client alerts are intended to provide general information about significant legal developments and should not be construed as legal advice regarding any specific facts and circumstances, nor should they be construed as advertisements for legal services.

***IRS CIRCULAR 230 NOTICE:*** *To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).*