
FCC Issues Procedures Relating to Delay of DTV Transition to June 12, 2009

by Scott R. Flick, Christine A. Reilly and Emily J. H. Daniels

Stations seeking to end analog operations on or before February 17, 2009 must file a NEW notice with the FCC not later than Monday, February 9, and air certain required viewer notifications.

On Wednesday, February 4, the U.S. House of Representatives passed the DTV Delay Act earlier adopted by the Senate. As previously reported, the bill delays the nationwide DTV transition date to June 12, 2009, but allows stations wishing to terminate analog operations before that date to do so in compliance with procedures established by the FCC. The bill is currently awaiting the President's signature.

Accordingly, the FCC released a Public Notice today, February 5, 2009, establishing procedures that address many issues raised by the new DTV transition date. The FCC has, however, reserved the right to make further revisions as necessary to implement the DTV Delay Act.

For Stations Wishing to Terminate Analog Operation on February 17, 2009

Numerous stations have already notified the FCC that they intend to terminate analog operations on February 17, 2009, the original DTV transition date, regardless of any change in the national DTV transition date. In order to terminate analog operations on February 17, 2009, stations must comply with all of the newly-announced requirements listed below. Stations should especially note that once they notify the FCC of their intent to terminate analog operations on February 17, 2009, they cannot withdraw or modify that notification except in the event of an emergency that necessitates continued analog operation.

1. Such stations must electronically file a notice with the FCC no later than Monday, February 9, 2009, **even if the station has previously advised the Commission of its intent to terminate on February 17**. Stations must also update their FCC Form 387, the DTV Transition Status Report, to reflect their intent to terminate analog operation on February 17, 2009.

The FCC has stated that it may require a station to continue analog operation beyond February 17, 2009 where it finds that the public interest requires such continued operation. In this regard, Acting Chairman Copps stated today that the Commission would closely scrutinize any market where all of the stations indicate they will terminate analog operations on February 17, particularly where

viewers in that market appear unprepared for the transition. Should the FCC undertake such scrutiny, the FCC stated that it may require stations to provide additional information, including the economic, technical, contractual and other business reasons supporting termination as of February 17, 2009. The Commission indicated that it will notify stations immediately if it intends to require them to continue to operate in analog after February 17.

2. Stations terminating analog operation on February 17 must air 120 on-air notifications prior to termination, of which 30 must air during primetime. The announcements must air daily and be evenly spread across the time remaining before the station terminates analog operation. The on-air notifications must air on both the station's pre-transition digital and analog channel, must be a combination of PSAs and crawls, and must contain the following information: (a) the station's call sign and city and state of license; (b) a statement that the station will terminate its analog operations on February 17 and that February 17 is prior to the new national transition date of June 12; (c) what viewers can do to continue to receive the station's signal after February 17; (d) information about the availability of digital to analog converter boxes in the station's market; and (e) a street address, e-mail address if available, and telephone number where viewers may register comments or receive information regarding the transition. Please note that these notifications must be aired in addition to the PSAs and crawls stations are already required to air by the FCC for DTV consumer education purposes.
3. Between February 10 (11:59 pm) and February 15 (11:59 pm), such stations must air crawls regarding their analog termination on their analog signal for at least 5 minutes of every hour. Each crawl should be 60 seconds in length, contain all of the information identified above for the station's other on-air notifications, and air over programming, not commercials.
4. Between February 15 (11:59 pm) and February 17 (11:59 pm), such stations must air 60-second crawls at least 10 times per hour every hour of the station's analog broadcast day.

If a station does not have the technical ability to air crawls, it must air the information in an alternative format for a comparable amount of time, for example, by airing extra PSAs.

5. Such stations must notify MVPDs that carry their signal so that these MVPDs can make appropriate adjustments in their facilities.

The FCC urged stations in markets where most or all stations will be converting on February 17 to consider organizing joint efforts to notify the public. The Commission also encouraged stations terminating normal analog operations on February 17, 2009 to broadcast (in analog), for at least two weeks after February 17, a screenshot or "slate" with audio, modeled after the "analog nightlight" slate. This slate should include information regarding the station's transition and, if necessary, any emergency information.¹ Stations do not need any special authority for this broadcast for a period of up to 30 days. Information regarding a station's intent to do so, however, should be included in the station's February 9 notification. We also recommend that stations terminating analog operation on February 17, 2009 advise their Congressional representatives so that they are aware of the station's plans before they receive any constituent communications regarding the station's analog termination.


¹ The NAB-produced nightlight video may also be aired.

For Stations Wishing to Terminate Analog Operation Between February 18, 2009 and June 11, 2009

Stations that do not intend to terminate analog operation on February 17 may still terminate analog operation prior to June 12, 2009. However, except in the case of an emergency, no station may terminate analog operation between February 18 and March 13, inclusive. In order to terminate analog operation on or after March 14, stations must:

1. Electronically file a notification with the FCC at least 30 days in advance of the planned termination date; and
2. Air four viewer notifications daily for at least 30 days, with at least one of those airing during prime-time each day.

For Stations Wishing to Terminate Analog Operation on June 12, 2009

Stations wishing to terminate analog operation on June 12, 2009 do not need to take any action at this time.

For Stations in Other Situations

Stations that have already terminated analog operations may resume analog operations upon the filing and grant of a request for Special Temporary Authority to do so. In these cases, the FCC will consider whether circumstances have changed since the station terminated analog operation such that the station's return to analog operation would cause interference. The request for Special Temporary Authority should indicate the new date on which the station intends to terminate analog operation.

Stations that have previously notified the Commission of their intent to terminate analog operation on a date prior to February 17, 2009, but which have not yet done so, must file a notification with the FCC by February 9, 2009 indicating whether they will still terminate prior to February 17, 2009 or continue analog operation to a future date.

Effect of Analog Termination

As noted above, stations that notify the FCC by February 9, 2009 that they intend to terminate analog operation on February 17, 2009 cannot withdraw or modify their notification except in the case of an emergency. In addition, once a station has terminated analog operation, it loses interference protection on its analog channel. Accordingly, third parties, such as Class A and Low Power Television stations, will be permitted to file applications that previously would have been blocked by a full power station's analog authorization. Stations should therefore consult with their legal and technical advisors before notifying the FCC that they intend to terminate analog operation on February 17.

Effect on Digital Operation

The above procedures apply only with respect to terminating a station's analog operation and do not affect a station's digital operation. Therefore, a station that wishes to continue with pre-transition digital operation between February 18 and June 12 need take no additional steps. If, however, a station wishes to commence operation on its post-transition channel prior to June 12, it must file a request for Special Temporary Authority and receive a grant prior to making that change. In requesting Special Temporary Authority,

the station must demonstrate that (1) it will not cause any interference to authorized analog or pre-transition digital stations; (2) it will maintain at least current digital service levels; and (3) it will commence full authorized post-transition service no later than June 12.

For further information, please contact:

Scott R. Flick **(bio)**
Washington DC
+1.202.663.8167
scott.flick@pillsburylaw.com

Christine A. Reilly **(bio)**
Washington DC
+1 202.663.8245
christine.reilly@pillsburylaw.com

Emily J. H. Daniels **(bio)**
Washington DC
+1.202.663.9378
emily.daniels@pillsburylaw.com

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2009 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.