
Options for Television Stations: Navigating the Uncertainty of a Delay in the DTV Transition Date

by Richard R. Zaragoza, Lauren Lynch Flick and Paul A. Cicelski

Legislation has been introduced in the United States Senate which, if enacted, would delay the current February 17, 2009 DTV transition deadline for a period of four months, or until June 12, 2009. A delay in the transition date will inevitably cause uncertainty and raise many questions, such as whether a station's decision to cease analog operations before the proposed deadline may still go forward as planned.

Legislation delaying the DTV transition has yet to be enacted into law, although passage could occur early next week. Accordingly, the FCC has not as yet issued any formal guidance with respect to the many issues that will arise if the DTV transition deadline is postponed. However, based on informal discussions we have had with FCC staff, television stations wishing to proceed with plans for an "early" termination of their analog operations, notwithstanding a change in the transition date, should consider the following relatively straightforward procedures.

The FCC's current rules allow stations that wish to terminate their analog operations prior to the transition deadline to do so simply by providing the FCC and the public with 30 days notice prior to the termination.¹ Note that this option is only applicable to termination of analog operations, not any other changes to a station's pre-transition digital operations. If the June 12, 2009 date is adopted as the new national deadline for the DTV transition, the next opportunity to terminate analog operations simply upon notification may not arise until March 14, 2009, 90 days before June 12. Therefore, if a station wants to minimize the risk of having to await FCC approval before being permitted to terminate its analog operations before March 14, it should take advantage of the current state of the rules by electronically filing its "Legal STA" notice with the Commission and begin airing its viewer notifications at this time. As there are currently fewer than 30 days left until February 17, 2009, stations choosing to terminate their analog operations on that date will need to air 30 days' worth of public notices in the days remaining before February 17. This means airing 120 total announcements, 30 of which air during primetime, between the time the station gives notice of its intentions and February 17, 2009.

The FCC's current rules require that where a station wants to implement certain other authorized post-DTV-transition modifications before the national transition deadline, it must apply for Special Temporary Authority and receive a grant of that authority before proceeding. Examples of the types of actions that would require prior approval would be a station commencing operations on a post-transition digital channel that is different from its pre-transition digital channel, or a station implementing a construction permit for post-transition maximization operation. Because these actions have the potential to interfere with other stations' analog or pre-transition digital operations, it is expected that this prior approval requirement will remain in place notwithstanding a postponement in the DTV transition deadline to June 12. Stations wishing to implement these types of actions prior to any extended transition date should therefore conduct an engineering review of the impact of their proposed action on all existing analog station operations and pre-transition digital operations to determine whether going forward prior to June 12, 2009 is possible from an interference standpoint. The sooner any Special Temporary Authority request is submitted, the sooner the FCC's staff can begin processing it and can act on it. Any such request for Special Temporary Authority must be submitted electronically through the FCC's CDBS filing system.

Given the rapidly changing circumstances at play, we will continue to provide updated information as it is available. In the meantime, please feel free to contact any of the Communications group's lawyers to discuss the specific circumstances at your station and the options available.

For further information, please contact:

Richard R. Zaragoza **(bio)**
Washington DC
+1.202.663.8266
richard.zaragoza@pillsburylaw.com

Lauren Lynch Flick **(bio)**
Washington DC
+1.202.663.8166
lauren.lynch.flick@pillsburylaw.com

Paul A. Cicelski **(bio)**
Washington DC
+1.202.663.8413
paul.cicelski@pillsburylaw.com



¹ These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, i.e., how and when the station's digital signal can be received; (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. These viewer notifications are in addition to on-air announcements stations must air pursuant to the FCC's DTV Consumer Education Initiative.

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.