

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

In the Matter of
Second Periodic Review of the
Commission's Rules and Policies
Affecting the Conversion
To Digital Television
MB Docket No. 03-15
RM 9832

ORDER

Adopted: October 31, 2003

Released: October 31, 2003

By the Chief, Media Bureau:

1. The Media Bureau has received three requests related to the digital television ("DTV") simulcast requirements in Section 73.624(f) of our rules.1 South Texas Public Broadcasting System, Inc. ("STPBS") permittee of noncommercial educational television station KEDT-DT, Corpus Christi, Texas, requests a four-month waiver of Section 73.624(f).2 Washburn University of Topeka ("WUT"), licensee of noncommercial educational television station KTWU-DT, Topeka, Kansas, requests a six-month waiver of Section 73.624(f).3 WQED Multimedia ("WQED"), permittee of noncommercial educational television station WQED-DT, Pittsburg, Pennsylvania, requests a six-month waiver of Section 73.624(f).4 As discussed below, we grant STPBS's waiver request, and grant WUT's and WQED's waiver requests in part.

2. Background. Section 73.624(f) of the Commission's rules requires DTV licensees to simulcast 50% of the video programming of their analog channel on their DTV channel by April 1, 2003. This requirement increases to a 75% simulcast requirement on April 1, 2004, and a 100% requirement on April 1, 2005.5 The simulcasting requirement was intended to ensure that consumers enjoy continuity of free over-the-air video programming service when analog spectrum is reclaimed at the end of the

1 47 C.F.R. § 73.624(f).

2 STPBS, Request for Waiver of DTV Simulcast Requirements (Oct. 16, 2003) ("STPBS Request").

3 Washburn University of Topeka, Request for Waiver of DTV Simulcast Requirements (Oct. 21, 2003) ("WUT Request").

4 WQED Multimedia, Request for Waiver of DTV Simulcast Requirements (Oct. 31, 2003) ("WQED Request").

5 47 C.F.R. § 73.624(f)(i)-(iii).

transition. The Commission stated that it may be difficult to terminate analog broadcast service if broadcasters show programs on their analog channels that are not available on their digital channels.<sup>6</sup>

3. In the *Notice of Proposed Rule Making* initiating the second periodic review of the transition to digital television, adopted January 15, 2003 (“*Second DTV Periodic Review NPRM*”), the Commission sought comment on whether it should retain, revise, or remove the simulcast requirement.<sup>7</sup> Among other questions, the Commission asked whether broadcasters have a market-based incentive to simulcast that makes a simulcast requirement unnecessary.<sup>8</sup> The Commission also asked whether the simulcasting requirement is causing broadcasters to forego creative uses of digital technology, and if something less than the ultimate 100% simulcast requirement would be sufficient to protect analog viewers while allowing for innovation on DTV channels. The Commission also sought comment on how to define simulcasting, and whether the current dates for the phase-in of simulcast requirements are appropriate. The *Second DTV Periodic Review NPRM* did not propose to reduce or eliminate the minimum digital operating requirements that are currently pegged to the simulcast requirements.<sup>9</sup>

4. On April 29, 2003, the Media Bureau issued an *Order* granting to noncommercial educational (“NCE”) stations a six-month waiver of certain simulcast requirements until November 1, 2003.<sup>10</sup> In this *Simulcast Order* we found that in light of the burden faced by NCE stations in complying with both the construction and simulcasting requirements at once, and in light of our pending re-evaluation of our simulcasting requirements, good cause existed to grant NCE stations a six-month waiver of the simulcast requirements in Section 73.624(f).<sup>11</sup> We stated that the six-month waiver of our simulcast requirements would give NCE stations additional time to acquire and install the facilities necessary to meet the simulcast requirement. We also stated that we would consider requests for waiver extensions from NCE stations on their individual merits if the Commission has not yet acted on the simulcasting issues raised in the *Second DTV Periodic Review NPRM* by November 1, 2003.

5. *STPBS Waiver Request.* STPBS requests a four-month waiver of Section 73.624(f) until March 1, 2004.<sup>12</sup> STPBS states that KEDT-DT was activated under special temporary authority on

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<sup>6</sup> *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809, 12833, ¶ 56 (1997) (“*Fifth Report and Order*”), *on recon.*, 13 FCC Rcd 6860, *on further recon.*, 14 FCC Rcd 1348 (1998), *recon. dismissed*, DA 99-1361 (rel. July 12, 1999), *recon. dismissed*, FCC 00-59 (rel. Feb. 23, 2000).

<sup>7</sup> *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, Public Interest Obligations of TV Broadcast Licensees*, 18 FCC Rcd 1279 (2003).

<sup>8</sup> *Id.* at 1302, ¶ 66.

<sup>9</sup> To the contrary, the Commission proposed that, if the simulcasting requirements in Section 73.624(f) were reduced or eliminated, Section 73.624(b)(1) would be amended to require DTV stations subject to the May 1, 2002, or May 1, 2003, construction deadlines to air, by April 1, 2003, a digital signal for an amount of time equivalent to 50% of the time they provide an analog signal. The digital signal must be aired during prime time hours. This minimum digital operating requirement would increase to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the time the station airs an analog signal), and to 100% on April 1, 2005. *Second DTV Periodic Review NPRM*, 18 FCC Rcd at 1303, ¶ 68.

<sup>10</sup> *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, 18 FCC Rcd 8166 (2003) (“*Simulcast Order*”).

<sup>11</sup> *Simulcast Order*, 18 FCC Rcd at 8168, ¶ 6.

<sup>12</sup> *STPBS Request* at 1.

September 23, 2003.<sup>13</sup> STPBS states that it is currently relying on the Public Broadcasting Service's national high definition feed, but it is working actively on finishing construction of the master control structure that will allow it to simulcast. STPBS states that the necessary encoding and multiplexing equipment will be installed by March 1, 2004.<sup>14</sup>

6. We find good cause to grant STPBS a waiver of the simulcast requirements in Section 73.624(f), until March 1, 2004.<sup>15</sup> This four-month waiver of our simulcast requirements will give the station additional time to acquire and install the facilities necessary to meet the simulcast requirement. As the Commission has stated, we will consider granting special relief to NCE stations in certain circumstances, such as those presented here, because of the particular financial difficulties NCE stations face and the assistance they will need in the transition to DTV.<sup>16</sup>

7. *WUT and WQED Waiver Requests.* WUT requests a six-month waiver of Section 73.624(f).<sup>17</sup> WUT states that it currently multicasts a high-definition digital stream and a standard definition digital stream on KTWU-DT. According to WUT, on the high-definition stream, KTWU broadcasts the Public Broadcasting Service ("PBS") High-Definition Demonstration Loop, HDTV feeds from PBS and American Public Television, PBS's primetime HDTV schedule, and delayed high-definition programming recorded by KTWU, all of which WUT characterizes as providing "a wide sampling of innovative high-definition programming."<sup>18</sup> On the standard definition digital stream KTWU broadcasts a service consisting of all children's programming. WUT asserts that its plan to offer high-definition television programming demonstrating the advantages of DTV broadcasting, along with a dedicated children's program channel, is the most effective way to serve the public interest and stimulate community interest in DTV service.<sup>19</sup>

8. WQED also requests a six-month waiver of Section 73.624(f).<sup>20</sup> WQED states that it currently broadcasts a high-definition signal which several local cable systems in the market have agreed to carry because the programming is unique in the market.<sup>21</sup> WQED states that during the day it broadcasts the PBS High-Definition Demonstration Loop and in the evening it broadcasts the PBS special primetime HDTV schedule.<sup>22</sup> WQED states that it does not yet have the encoding and decoding equipment necessary to generate both an HDTV signal and a standard definition digital stream to carry its

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2.

<sup>15</sup> See 5 U.S.C. § 553(b)(3)(B). The Commission may waive its rules when good cause is shown. See 47 C.F.R. § 1.3; *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>16</sup> See *Fifth Report and Order*, 12 FCC Rcd at 12852, ¶ 104.

<sup>17</sup> *WUT Request* at 1.

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *WQED Request* at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1-2.

local programming. According to WQED, that equipment will cost \$250,000, and it needs additional time to budget for that expenditure.<sup>23</sup>

9. We find good cause to grant WUT and WQED waivers of the simulcast requirements in Section 73.624(f). We do not grant the stations' requests for a six-month waiver, however, but instead grant the waivers pending the resolution of simulcasting issues in the second DTV periodic review.<sup>24</sup> By temporarily waiving the current rules, we are permitting WUT and WQED to experiment with innovative uses of their digital signals by offering combinations of HDTV and SDTV programming. Following the issuance of an *Order* in the second DTV periodic review, WUT and WQED must bring their DTV stations into compliance within a period of time specified in that *Order*.

10. These actions in no way waive the existing rules regarding the minimum hours of operation on digital channels. Thus, each station must air a digital signal for an amount of time equivalent to at least 50% of the time it provides an analog signal. In addition, a digital video program signal must be aired during prime time hours. The minimum digital operating requirement increases to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the time the station airs an analog signal), and to 100% on April 1, 2005. Stations, both commercial and NCE, that have been granted an extension of time to construct their DTV facilities must comply with the minimum digital operation requirements in effect at the time the station commences digital operations.

11. **IT IS HEREBY ORDERED** that, pursuant to the authority contained in Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Request for Waiver of DTV Simulcasting Requirements filed by South Texas Public Broadcasting System, Inc. **IS GRANTED** to the extent described herein.

12. **IT IS FURTHER ORDERED** that the Request for Waiver of DTV Simulcasting Requirements filed by Washburn University of Topeka **IS GRANTED IN PART** to the extent described herein.

13. **IT IS FURTHER ORDERED** that the Request for Waiver of DTV Simulcasting Requirements filed by WQED Multimedia **IS GRANTED IN PART** to the extent described herein.

14. This action is taken pursuant to authority delegated by Sections 0.61(h) and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61(h), 0.283.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree  
Chief, Media Bureau

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<sup>23</sup> *Id.* at 2.

<sup>24</sup> See 5 U.S.C. § 553(b)(3)(B). See also, *supra* n. 15.