

applicable, to the following applications and petitions will be deemed mutually exclusive with those applications and petitions:

(A) Other DTV applications filed the same day;

(B) Rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making had been released and the comment deadline specified therein had not passed prior to the filing date of the DTV application; and

(C) Earlier-filed rulemaking petitions to amend the DTV table of allotments for which a Notice of Proposed Rule Making had not been released.

(3) DTV applicants, DTV applicants and NTSC applicants, or DTV applicants and DTV rulemaking petitioners that are mutually exclusive pursuant to this section will be notified by Public Notice and provided with a 90-day period of time to resolve their mutual exclusivity via engineering amendment or settlement. Those applications and petitions that remain mutually exclusive upon conclusion of the 90-day settlement period will be dismissed.

[62 FR 26719, May 14, 1997, as amended at 63 FR 13560, Mar. 20, 1998; 64 FR 4327, Jan. 28, 1999; 65 FR 30002, May 10, 2000; 65 FR 58467, Sept. 29, 2000; 66 FR 9984, Feb. 13, 2001; 66 FR 65134, Dec. 18, 2001; 69 FR 31906, June 8, 2004; 73 FR 5683, Jan. 30, 2008]

§ 73.624 Digital television broadcast stations.

(a) Digital television (“DTV”) broadcast stations are assigned channels 6 MHz wide. Initial eligibility for licenses for DTV broadcast stations is limited to persons that, as of April 3, 1997, are licensed to operate a full power television broadcast station or hold a permit to construct such a station (or both).

(b) DTV broadcast station permittees or licensees must transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel. Until such time as a DTV station permittee or licensee ceases analog transmissions and returns that spectrum to the Commission, and except as provided in paragraph (b)(1) of this section, at any time that a DTV broadcast station permittee or licensee transmits a video program signal on its

analog television channel, it must also transmit at least one over-the-air video program signal on the DTV channel. The DTV service that is provided pursuant to this paragraph must be at least comparable in resolution to the analog television station programming transmitted to viewers on the analog channel.

(1) DTV broadcast station permittees and licensees required to construct and operate a DTV station by May 1, 2002, or May 1, 2003, pursuant to paragraph (d) of this section must, at a minimum, beginning on the date on which the DTV station is required to be constructed, provide a digital video program signal, of the quality described in paragraph (b) of this section, during prime time hours as defined in § 79.3(a)(6) of this chapter. These licensees and permittees must also comply with the minimum operating hours requirements in paragraph (f) of this section.

(2) DTV licensees or permittees that choose to commence digital operation before the construction deadline set forth in paragraph (d) of this section are not subject to any minimum schedule for operation on the DTV channel.

(c) Provided that DTV broadcast stations comply with paragraph (b) of this section, DTV broadcast stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations’ obligations under paragraph (b) of this section. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

(1) DTV licensees that provide ancillary or supplementary services that are analogous to other services subject to regulation by the Commission must

comply with the Commission regulations that apply to those services, provided, however, that no ancillary or supplementary service shall have any rights to carriage under §§ 614 or 615 of the Communications Act of 1934, as amended, or be deemed a multichannel video programming distributor for purposes of section 628 of the Communications Act of 1934, as amended.

(2) In all arrangements entered into with outside parties affecting service operation, the DTV licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material in the sole judgement of the permittee or licensee. The licensee or permittee is also responsible for all aspects of technical operation involving such telecommunications services.

(3) In any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, a licensee shall establish that all of its program services on the analog and the DTV spectrum are in the public interest. Any violation of the Commission's rules applicable to ancillary or supplementary services will reflect on the licensee's qualifications for renewal of its license.

(d) Digital television broadcast facilities that comply with the FCC DTV Standard (section 73.682(d)), shall be constructed in the following markets by the following dates:

(1)(i) May 1, 1999: all network-affiliated television stations in the top ten television markets;

(ii) November 1, 1999: all network-affiliated television stations not included in category (1)(i) and in the top 30 television markets;

(iii) May 1, 2002: all remaining commercial television stations;

(iv) May 1, 2003: all noncommercial television stations.

(v) August 18, 2008 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations that will use the same channel used for pre-transition operation for post-transition operation and that, as of December 31, 2007, have a construction permit for facilities that conform to the facilities defined by the new

DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87-268 and codified at 47 CFR 73.622(i).

(vi) August 18, 2008 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations that will use the same channel used for pre-transition operation for post-transition operation but which, as of December 31, 2007, do not have a construction permit for facilities that conform to the facilities defined by the new DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87-268 and codified at 47 CFR 73.622(i).

(vii) February 17, 2009 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations whose post-transition digital channel is different from their pre-transition digital channel and for those stations whose post-transition channel is the same as their pre-transition channel but that are subject to a unique technical challenge that has been specifically recognized as such by the Commission.

(2) For the purposes of paragraph (d)(1):

(i) The term, "network," is defined to include the ABC, CBS, NBC, and Fox television networks;

(ii) The term, "television market," is defined as the Designated Market Area or DMA as defined by Nielsen Media Research as of April 3, 1997; and

(iii) The terms, "network-affiliated" or "network-affiliate," are defined to include those television stations affiliated with at least one of the four networks designated in paragraph (d)(2)(i) as of April 3, 1997. In those DMAs in which a network has more than one network affiliate, paragraphs (d)(1)(i) and (ii) of this section shall apply to its network affiliate with the largest audience share for the 9 a.m. to midnight time period as measured by Nielsen Media Research in its Nielsen Station Index, Viewers in Profile, as of February, 1997.

(3) *Authority delegated.* (i) Authority is delegated to the Chief, Media Bureau

to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(ii) For construction deadlines occurring prior to February 18, 2009, the following circumstances may include, but shall not be limited to:

(A) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; or

(B) Where the licensee or permittee is currently the subject of a bankruptcy or receivership proceeding, or is experiencing severe financial hardship as defined by negative cash flow for the past three years.

(iii) For construction deadlines occurring after February 17, 2009, the tolling provisions of § 73.3598 shall apply.

(iv) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

(v) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

(e) The application for construction permit must be filed on Form 301 (except for noncommercial stations, which must file on Form 340) on or before the date on which half of the construction period has elapsed. Thus, for example, for applicants in category (d)(1)(i), the application for construction period must be filed by May 1, 1998.

(f)(1) Commencing on April 1, 2003, DTV television licensees and permittees required to construct and operate a DTV station by May 1, 2002, or May 1, 2003, must transmit at least one over-

the-air video program signal at no direct charge to viewers on their DTV channel at least 50 percent of the time they are transmitting a video program signal on their analog channel.

(2) Commencing on April 1, 2004, DTV licensees and permittees described in paragraph (f)(1) of this section must transmit a video program signal as described in paragraph (f)(1) of this section on the DTV channel at least 75 percent of the time they are transmitting a video program signal on the analog channel.

(3) Commencing on April 1, 2005, DTV licensees and permittees described in paragraph (f)(1) of this section must transmit a video program signal as described in paragraph (f)(1) of this section on the DTV channel at least 100 percent of the time they are transmitting a video program signal on the analog channel.

(4) The minimum operating hours requirements imposed in paragraphs (f)(1) through (3) of this section will terminate when the analog channel terminates operation and a 6 MHz channel is returned by the DTV licensee or permittee to the Commission.

(g) Commercial and noncommercial DTV licensees and permittees must annually remit a fee of five percent of the gross revenues derived from all ancillary or supplementary services, as defined by paragraph (b) of this section, which are *feeable*, as defined in paragraphs (g)(2)(i) through (ii) of this section.

(1)(i) All ancillary or supplementary services for which payment of a subscription fee or charge is required in order to receive the service are *feeable*. The fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service.

(ii) Any ancillary or supplementary service for which no payment is required from consumers in order to receive the service is *feeable* if the DTV licensee directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a

subscription fee is not required). The fee required by this provision shall be imposed on any and all revenues from such services, other than revenues received from a third party in return for the transmission of commercial advertisements used to support broadcasting for which a subscription fee is not required.

(2) *Payment of fees.* (i) Each December 1, all commercial and noncommercial DTV licensees and permittees will electronically report whether they provided ancillary or supplementary services in the 12-month period ending on the preceding September 30. Licensees and permittees will further report, for the applicable period:

(A) A brief description of the services provided;

(B) Which services were feeable ancillary or supplementary services;

(C) Whether any ancillary or supplementary services provided were not subject to a fee;

(D) Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

(E) The amount of bitstream used to provide ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.

(ii) If a commercial or noncommercial DTV licensee or permittee has provided feeable ancillary or supplementary services at any point during a 12-month period ending on September 30, the licensee or permittee must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12-month period and will remit the payment of the required fee.

(iii) The Commission reserves the right to audit each licensee's or permittee's records which support the calculation of the amount specified on line 23A of Form 159. Each licensee or permittee, therefore, is required to re-

tain such records for three years from the date of remittance of fees.

[62 FR 26989, May 16, 1997, as amended at 63 FR 15784, Apr. 1, 1998; 63 FR 69216, Dec. 16, 1998; 64 FR 4327, Jan. 28, 1999; 66 FR 58982, Nov. 26, 2001; 66 FR 65135, Dec. 18, 2001; 67 FR 13232, Mar. 21, 2002; 67 FR 38423, June 4, 2002; 69 FR 59535, Oct. 4, 2004; 73 FR 5683, Jan. 30, 2008]

EFFECTIVE DATE NOTE: At 73 FR 5683, Jan. 30, 2008, §73.624 was amended by revising paragraphs (g) introductory text and (g)(2). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 73.625 DTV coverage of principal community and antenna system.

(a) *Transmitter location.* (1) The DTV transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, the following minimum F(50,90) field strength in dB above one uV/m will be provided over the entire principal community to be served:

Channels 2-6	35 dBu
Channels 7-13	43 dBu
Channels 14-69	48 dBu

NOTE TO PARAGRAPH (a)(1): These requirements above do not become effective until December 31, 2004 for commercial television licensees and December 31, 2005 for non-commercial television licensees. Prior to those dates, the following minimum F(50,90) field strength in dB above one uV/m must be provided over the entire principal community to be served:

Channels 2-6	28 dBu
Channels 7-13	36 dBu
Channels 14-69	41 dBu

(2) The location of the antenna must be so chosen that there is not a major obstruction in the path over the principal community to be served.

(3) For the purposes of this section, coverage is to be determined in accordance with paragraph (b) of this section. Under actual conditions, the true coverage may vary from these estimates because the terrain over any specific path is expected to be different from the average terrain on which the field strength charts were based. Further,