

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

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

**ORDER**

**Adopted: November 14, 2003**

**Released: November 17, 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.<sup>1</sup> The Board of Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico, licensee of noncommercial educational television station KNME-DT, Albuquerque, New Mexico ("KNME"), the Regents of New Mexico State University, permittee of noncommercial educational television station KRWG-DT, Las Cruces, New Mexico ("KRWG"), and Eastern New Mexico University, licensee of noncommercial educational television station KENW-DT, Portales, New Mexico ("KENW") request six-month waivers of Section 73.624(f).<sup>2</sup> As discussed below, we grant all three waiver requests.

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.<sup>3</sup> 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

<sup>1</sup> 47 C.F.R. § 73.624(f).

<sup>2</sup> 47 C.F.R. § 73.624(f). Board of Regents of University of New Mexico and Board of Education of the City of Albuquerque, New Mexico, Request for Waiver of DTV Simulcast Requirements (Oct 10, 2003) ("KNME Request"), Regents of New Mexico State University, Request for Waiver of DTV Simulcast Requirements (Oct 27, 2003) ("KRWG Request"); Eastern New Mexico University, Request for Waiver of DTV Simulcast Requirements Eastern New Mexico University

<sup>3</sup> 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>4</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>5</sup> Among other questions, the Commission asked whether broadcasters have a market-based incentive to simulcast that makes a simulcast requirement unnecessary<sup>6</sup> The Commission also asked whether the simulcasting requirement is causing broadcasters to forgo 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>7</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>8</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>9</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 had not yet acted on the simulcasting issues raised in the *Second DTV Periodic NPRM* by November 1, 2003.

5 *Waiver Requests.* KNME, KRWG, and KENW request six-month waivers of Section 73.624(f) until May 1, 2004<sup>10</sup> All three petitioners state that their digital stations are currently relying on

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<sup>4</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>5</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>6</sup> *Id.* at 1302, ¶ 66

<sup>7</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>8</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>9</sup> *Simulcast Order*, 18 FCC Rcd at 8168, ¶ 6

<sup>10</sup> *KNME Request* at 1; *KRWG Request* at 1; *KENW Request* at 1.

the Public Broadcasting Service's DTV feed, and are operating 24 hours a day, seven days a week. The petitioners also state that although their stations are unable to simulcast now, each is in the process of acquiring the equipment necessary to do so. KRWG and KENW received portions of a grant on September 30, 2003, that should enable them to obtain and install the necessary encoding and multiplexing equipment by May 1, 2004.<sup>11</sup> Although KNME has advanced further than the other two stations in acquiring and installing the necessary equipment, it states that it does not yet have some necessary equipment and expects that impending winter weather conditions at its transmitter site will impede the installation of some of its equipment.<sup>12</sup>

6 We find good cause to grant KNME, KRWG, and KENW waivers of the simulcast requirements in Section 73.624(f), until May 1, 2004.<sup>13</sup> These waivers will give the stations additional time to acquire and install the facilities necessary to meet the requirements. 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>14</sup>

7 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.

8 **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 Requests for Waiver of DTV Simulcasting Requirements filed by the Board of Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico, the Regents of New Mexico State University, and Eastern New Mexico University **ARE GRANTED** to the extent described herein.

9 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

<sup>11</sup> *KENW Request* at 2, *KRWG Request* at 2. The petitioners state that the KNME is administering the grant on behalf of KENW-DT and KRWG-DT.

<sup>12</sup> *KNME Request* at 2. KNME also states that it has applied to convert its existing analog studio-to-transmitter link to make it capable of also feeding its digital station, and expects to receive authorization within two or three months.

<sup>13</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, *Walt Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>14</sup> See *Fifth Report and Order*, 12 FCC Rcd at 12852, ¶ 104.