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

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DISP

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: April 23, 2004

Released: April 27, 2004

By the Chief, Media Bureau:

1. The Media Bureau has received a request for a six-month waiver of the digital television ("DTV") simulcasting requirements in Section 73.624(f)<sup>1</sup> of our rules filed on behalf of South Texas Public Broadcasting System, Inc. ("STPBS"), permittee of noncommercial educational television station KEDT-DT, Corpus Christi, Texas.<sup>2</sup> As discussed below, we grant STPBS's waiver request.

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 increased to a 75% simulcasting requirement on April 1, 2004, and increases to 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 transition. The Commission has 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 simulcasting requirement.<sup>5</sup> Among other questions, the Commission asked whether broadcasters have a market-based incentive to simulcast that

<sup>1</sup> 47 C.F.R. § 73.624(f).

<sup>2</sup> STPBS, Request for Waiver of Simulcasting Requirement, dated March 29, 2004.

<sup>3</sup> 47 C.F.R. § 73.624(f)(i)-(iii).

<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).

makes a simulcasting requirement unnecessary.<sup>6</sup> The Commission also asked whether the simulcasting requirement is causing broadcasters to forego creative uses of digital technology, and whether something less than the ultimate 100% simulcasting 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 simulcasting 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 simulcasting requirements.<sup>7</sup>

4. On April 29, 2003, the Media Bureau issued an *Order* granting 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 simulcasting requirements in Section 73.624(f).<sup>9</sup> We stated that the six-month waiver of our simulcasting requirements would give NCE stations additional time to acquire and install the facilities necessary to meet the simulcasting 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 Review NPRM* by November 1, 2003.

5. On October 31, 2003, the Media Bureau issued an *Order* granting a request by STPBS for a waiver of the simulcasting requirements for KEDT-DT until March 1, 2004.<sup>10</sup> STPBS stated that KEDT-DT was activated under special temporary authority on September 23, 2003 and that it was relying on the Public Broadcasting Service's national high definition ("HD") feed while it was working on finishing construction of the master control structure that would allow it to simulcast. The Media Bureau found that good cause existed to grant the waiver to give KEDT-DT additional time to install the necessary encoding and multiplexing equipment to permit simulcasting.<sup>11</sup>

6. *STPBS Waiver Request.* STPBS requests another waiver of Section 73.624(f), for a period of six months, to permit it to resolve technical problems that have delayed implementation of simulcasting. STPBS states that it installed the additional basic multiplexing and encoding equipment needed to offer a multicast broadcast stream on February 25, 2004 as planned. However, a problem has arisen that has impeded STPBS's implementation of the plan to offer both the PBS HD signal and a standard definition digital signal that would be used for simulcasting. STPBS, along with other PBS member stations in Texas, is also planning to datacast educational content. STPBS states that it has proved impractical to transmit all

<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> *See Order*, DA 03-3507 (rel. Oct. 31, 2003).

<sup>11</sup> The Media Bureau has granted similar simulcasting deadline extensions to other NCE stations. *See Orders*, DA 03-3499 (rel. Oct. 31, 2003); DA 03-3663 (rel. Nov. 17, 2003).

three signals – the HD signal, the standard definition digital signal, and the data stream – without material degradation in the quality of one of the signals. STPBS states that it is in the process of acquiring an additional multiplexer, which it expects to be able to install in six months, or by September 1, 2004.

7. We find good cause to grant STPBS an additional waiver of the simulcast requirements in Section 73.624(f) until September 1, 2004. This six-month waiver of our simulcast requirements will give the station additional time to acquire and install the multiplexing equipment necessary to permit it to broadcast the two video streams and one data stream. While STPBS states that it could as a technical matter substitute a digitized version of its regular programming for the PBS HD signal it now airs for 75% of the broadcast day, we agree with STPBS that grant of a waiver to permit it to continue to provide HD programming while it works to acquire and install new multiplexing equipment will best serve the public interest by ensuring that HD programming continues to be available in the STPBS broadcast area. We also note that the Commission has not yet issued a Report and Order in the Second DTV Periodic Review proceeding, where it has raised the issue of whether the simulcasting requirement should be retained, revised, or eliminated. In view of the continued pendency of this proceeding, and in view of STPBS's commitment to expeditiously acquiring and installing the equipment necessary to comply with the current simulcasting requirement, we believe that grant of the waiver requested by STPBS is warranted.

8. The action we take today does not waive the existing rules regarding the minimum hours of operation on digital channels. Thus, KEDT-DT must air a digital signal for an amount of time equivalent to at least 75% 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 100% on April 1, 2005 (requiring airing of a digital signal for an amount of time equivalent to at least 100% of the time the station airs an analog signal). 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.

9. **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 Simulcasting Requirement filed by South Texas Public Broadcasting System, Inc. **IS GRANTED** to the extent described herein.

10. 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