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Dated: June 27, 2003.

Stephen Heare,

Acting Director, Office of Emergency Prevention, Preparedness, and Response.
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FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 03-15, RM 9832, MM Docket Nos. 99-360, 00-167, 00-168; DA 03-1292]

RIN 3060-AH54

Simulcasting Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice; temporary waiver request.

SUMMARY: This document discusses three requests filed with the Commission by various parties regarding DTV simulcasting requirements. This item grants a 6 month waiver of NCE TV stations to give them more time to comply with the requirements. This document also denies a request for suspension of the increase in minimum DTV operating hours. These actions are taken in compliance with the Commission's DTV rules.

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SUPPLEMENTARY INFORMATION: This document is a summary of the Commission's Order, MB 03-15; DA 03-1292, adopted April 28, 2003 and released April 29, 2003. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW.,

Room CY-A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com or may be viewed via Internet at <http://www.fcc.gov/mb/>.

Synopsis of Order

1. The Media Bureau has received three requests related to the DTV simulcast requirements in § 73.624(f) of our rules. Noncommercial educational television stations collectively request a temporary suspension of the DTV simulcasting requirements as they apply to NCE stations. Paxson Communications Corporation ("Paxson") and Milwaukee Area Technical College ("MATC") request temporary waivers of § 73.624(f). As discussed, we grant NCE stations a six-month waiver of the DTV simulcast requirements. We also grant the waiver request of MATC and deny the Paxson waiver request.

Background

2. 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. 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 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.

3. In the Memorandum Opinion and Order on Reconsideration ("MO&O") in the 1st DTV periodic review, MM 00-39 (66 FR 65122, December 18, 2001), the Commission allowed stations subject to the May 1, 2002, or May 1, 2003, digital construction deadlines to operate initially at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. The minimum operating hours for these digital stations effectively increases as the simulcast obligations are phased in. For example, beginning April 1, 2003, a DTV station that was required to be on the air by May 1, 2002, must provide a simulcast digital signal at least 50% of the time it transmits an analog signal and. Along

with the simulcasting requirements, the minimum hours requirements step up to a 75% requirement in April 2004, and a 100% requirement in April 2005. Stations that were subject to the earlier DTV construction deadlines (top four network affiliates in the top thirty markets) are required to operate their DTV station at any time that the analog station is operating.

4. In the Notice of Proposed Rule Making ("NPRM") initiating the 2nd periodic review of the transition to digital television (68 FR 7737, February 18, 2003), the Commission sought comment on whether it should retain, revise, or remove the simulcast requirement. The Commission asked whether broadcasters have a market-based incentive to simulcast that makes a simulcast requirement unnecessary. 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.

5. *NCE Television Stations.* Dow, Lohnes & Albertson, Schwartz, Woods & Miller, the Public Broadcasting Service, and the Association of Public Television Stations (collectively referred to herein as "PBS, et al."), on behalf of NCE TV licensees, request that the FCC temporarily suspend the DTV simulcasting requirements as they apply to NCE stations pending FCC action on the simulcasting issues in the 2nd DTV periodic review proceeding. The emergency request states that, although many NCE DTV stations will be able to transmit a digital television signal by the May 1, 2003, construction deadline, some stations do not yet have in place necessary studio transmitter links ("STLs") or other digital interconnection facilities between their studios and their transmitters to permit them to receive the simulcast programming feed from their studios. According to PBS, some NCE stations also do not yet have the encoding equipment that enables the station to digitize its NTSC programming for DTV broadcast.

6. We recognize that, unlike commercial licensees, the deadlines to complete construction of digital facilities and to comply with the 50% simulcasting requirement for noncommercial educational licensees were the same. PBS states that many