

NCE stations will be unable to both begin digital operations and comply with our current simulcasting obligations by May 1, 2003. In light of the burden faced by NCE stations in complying with both the construction and simulcasting requirements simultaneously, and in light of our pending re-evaluation of our simulcasting requirements, we find that good cause exists to grant NCE stations a six-month waiver of the simulcast requirements in § 73.624(f). Until November 1, 2003, noncommercial educational television stations will not be required to simulcast on their digital channel the programming that is aired on their analog channel. This six-month waiver of our simulcast requirements will give NCE stations additional time to acquire and install the facilities necessary to meet the simulcast requirement. 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. Although NCE stations requested a waiver until resolution of the simulcasting issues raised in the 2nd DTV Periodic *NPRM*, we do not believe it is necessary to grant a blanket waiver to all NCE stations for an indefinite period of time. We believe that a six-month waiver should provide sufficient time for those NCE stations that do not already have simulcasting equipment to obtain and install such equipment. In the event the Commission has not yet acted on the simulcasting issues raised in the 2nd DTV Periodic *NPRM*, and in the event some NCE stations decide to request a waiver for an additional period of time, we will consider those requests at that time on their individual merit. In taking this action we are not making a final ruling on the matters raised for comment in the 2nd DTV Periodic *NPRM*.

7. This action in no way waives the existing rules regarding the minimum hours of operation on digital channels. NCE stations must air, by May 1, 2003, a digital signal for an amount of time equivalent to at least 50% of the time they provide 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. *MATC Waiver Request.* MATC, licensee of two noncommercial educational television stations in Milwaukee, Wisconsin, requests a temporary waiver of § 73.624(f), for an unspecified period of time, to permit it to simulcast the analog programming of both of its NCE stations on one of its associated digital stations, and to use the other digital station to air high definition programming full time. MATC states that it has been operating WMVS-DT, associated with WMVS, Channel 10, since early 2000, and that it will comply with the simulcasting requirements applicable to that station. MATC has been granted an extension of time to complete construction of WMVT-DT, associated with WMVT, Channel 36, and expects that station to be on the air in July 2003. MATC states that the waiver it seeks will be needed only at the point that WMVT-DT commences operations.

9. MATC notes that, because it plans, at least initially, to provide its simulcast service on WMVS-DT, which has a larger predicted coverage area than WMVT-DT, each potential DTV viewer of MATC's stations should be able to receive the simulcast programming of both stations. MATC argues that its plan would satisfy the purpose behind the simulcasting requirement and allow MATC to investigate the feasibility in the market of an all-HDTV programming service. MATC also argues that its plan could stimulate the sale of DTV sets in its market, thereby furthering the transition.

10. We find good cause to grant MATC a waiver of the simulcast requirements in § 73.624(f), pending the issuance of an *R&O* in the 2nd DTV periodic review, to permit it to implement the plan it proposes in its waiver request. We note that, under MATC's proposal, it will be providing simulcast digital service of both of its analog channels to its community. By temporarily waiving the current rules, we are permitting MATC to experiment with innovative uses of its other digital channel and to offer additional digital programming to the community. Because MATC has committed to providing simulcasting, in the manner proposed in its waiver request, allowing it to offer additional digital programming to the community, we believe that it is appropriate to grant MATC a longer waiver to implement its proposed simulcasting plan than the waiver given to other NCE stations. In the 2nd DTV periodic review, the

Commission will consider, among other issues related to the simulcast requirement, whether the current simulcast rules should be amended to facilitate similar and other innovative uses of digital stations. As in the case of the temporary simulcast waiver granted above to all NCE stations, MATC will be required to comply with the existing rules regarding minimum hours of operation of digital channels.

11. *Paxson Waiver Request.* Paxson, corporate parent of the licensees of twenty-eight commercial DTV stations, requests a one-year waiver of § 73.624(f), and in particular the minimum operating hours requirements currently pegged to the § 73.624(f) simulcasting requirements. Paxson notes that regulatory uncertainty remains in two areas central to broadcasters' transition planning: DTV must-carry and DTV simulcasting requirements. Paxson argues that, without cable carriage, adherence to the simulcast requirement will not advance the DTV transition or improve service to television viewers, while placing undue financial and technical burdens on Paxson's DTV stations. Paxson notes that the 50% simulcast requirement that became effective April 1, 2003, represents a four-fold increase in Paxson's DTV stations' operating schedule, with corresponding increases in the stations' operating costs. Paxson argues that until broadcasters obtain carriage of their DTV signals, it should not be required to expand DTV service beyond prime-time as most viewers will not be able to view DTV broadcasts until cable carriage is achieved. Paxson also notes that the Commission is considering whether to alter or eliminate the simulcasting requirements.

12. We do not believe that it is appropriate at this stage in the transition to reduce or eliminate the mandatory hours of operation of digital stations. Increasing the operating hours of digital stations subject to the May 1, 2002, and May 1, 2003, digital construction deadlines will help further the transition by helping to drive DTV set penetration and encouraging content producers and advertisers to invest in DTV. These stations have been on notice since the November 2001 adoption of the phased-in simulcast requirements in the 1st DTV Periodic Review *MO&O* that their DTV operating hours must be stepped-up beginning on April 1, 2003. We also do not believe that the required, gradual increase in the hours of digital programming offered to viewers on these stations needs to await finalization of the Commission's separate proceeding regarding mandatory carriage of analog and digital signals