

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

In the Matter of
State of Alaska
Request for Waiver of Section 74.731(m) of the
Commission's Rules - Low Power Television
Analog Termination Date
Facility ID Nos. 11552, 62370, 62489, 62508,
62525, 62541, 62542, 62548, 62563, 62580,
62668, 62691, 62760, 62849 and 62850

ORDER

Adopted: June 21, 2021

Released: June 21, 2021

By the Commission:

I. INTRODUCTION

1. This Order grants a limited waiver to the State of Alaska (SOA) to continue operation of 15 analog television translators beyond the low power television and television translator station (LPTV/translator) analog termination deadline of 11:59 pm local time on July 13, 2021. Due to novel factors facing SOA that prevented the completion of the Stations' digital facilities, we hereby extend the analog termination deadline for the Stations to January 10, 2022.

II. BACKGROUND

2. The Digital Transition and Analog Termination Deadlines. Full power television stations completed their transition to digital on June 12, 2009 and Class A television stations on September 1, 2015. In 2011, when the Commission first adopted a digital transition deadline for LPTV/ translators and established September 1, 2015 as the deadline (original transition deadline), it concluded that "the Communications Act compelled low power television stations ultimately to convert to digital operation." The Commission reasoned that "allowing low power stations to continue operating in analog and to substantially delay or forgo completing their conversion to digital would prevent consumers from enjoying the benefits of digital broadcast technology, including improved picture and sound quality, and

1 See State of Alaska Waiver Request, May 13, 2021 (Waiver Request) and State of Alaska Waiver Supplement, June 11, 2021 (Waiver Supplement). A list of the 15 analog television translator stations that are the subject of this proceeding is included in the Appendix (referred to collectively as Stations). Copies of the waiver request and supplement are available as an attachment to the extension applications listed in the Appendix.

2 47 CFR §§ 73.616(d), 73.3700(b)(4)(iii).

3 Also pending are applications for extension of the Stations' digital construction permits. See Appendix. For the reasons discussed herein, we grant the Stations' extension applications and extend the digital construction permit expiration dates to January 10, 2022. See 47 CFR § 74.788(c)(1).

4 See DTV Delay Act, Pub. L. No.111-4, 123 Stat. 112 (2009); Digital Television and Public Safety Act of 2005 which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)).

5 See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, MB Docket No. 03-185, Second Report and Order, 30 FCC Rcd 10732, 10735 para. 7 (2011) (LPTV DTV Second R&O).

6 Id. at 10738-9, para. 12 (also noting that "the statute forbids permitting low power television stations to forever avoid converting to digital").

additional program offerings through multicasting.”<sup>7</sup> In adopting a “hard deadline” for LPTV/translator stations to terminate analog operations and begin operating in digital, the Commission stated that “setting a hard deadline . . . balances the concerns raised by low power operators with the need to complete the digital conversion across all television services in order to use the spectrum designated for broadcast efficiently and to bring the benefits of digital technology to all viewers.”<sup>8</sup>

3. The 2015 *LPTV DTV Third R&O* extended the original deadline for analog LPTV/translator stations to complete their transition to digital to 12 months after the completion of the 39-month Post-Incentive Auction Transition Period, which became July 13, 2021.<sup>9</sup> The Commission also set July 13, 2021, at 11:59 pm as the analog termination deadline - the date and time by which all LPTV/translator stations must terminate all analog television operations regardless of whether their digital facilities are operational.<sup>10</sup> This delay recognized that the Incentive Auction would likely have a significant impact on LPTV/translator digital conversion plans and, as such, the timing of the Incentive Auction necessitated a modification of the digital transition deadline.<sup>11</sup> Although it extended the digital transition and analog termination deadline, the Commission affirmed the commitment to completing the LPTV/translator digital transition by a date certain, concluding that the new deadline must continue to be a “hard deadline” where all LPTV/translator stations must terminate all analog operations regardless of whether their digital facilities are operational.<sup>12</sup> In so doing, the Commission recognized that “fewer and fewer households rely on analog television service, and . . . the slight potential for the loss of analog service that may occur on the transition date is outweighed by the need to ensure that all analog LPTV and TV translator stations complete a timely digital conversion.”<sup>13</sup>

4. *State of Alaska Translator Network.* In its Waiver Request, SOA states that since the late 1970s it has owned and operated a network of analog TV translator stations located in rural and bush Alaska Native communities.<sup>14</sup> This system is now called the Alaska Rural Communications System (ARCS). SOA states that ARCS sites provide free, over-the-air television and radio programming,

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015) (*LPTV DTV Third R&O*). See also *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018) (*Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release date of the *Closing and Channel Reassignment Public Notice*, the LPTV digital transition date is July 13, 2021.

<sup>10</sup> See 47 CFR § 74.731(m). In accordance with our rules all licenses for analog operations shall *automatically cancel* after 11:59 pm on July 13, 2021, without any affirmative action by the Commission. *Id.* (emphasis added)

<sup>11</sup> *LPTV DTV Third R&O*, 30 FCC Rcd at 33, para. 8.

<sup>12</sup> *Id.* (noting that “this requirement is necessary in order to ensure that analog LPTV and TV translator stations take all steps necessary to complete their digital construction in a timely manner”).

<sup>13</sup> *Id.*

<sup>14</sup> Waiver Request at 1. SOA maintains that the rural and Alaska Bush communities that would benefit from this waiver are rural, sparsely populated and, in some situations, impoverished communities that are most likely in need of free, over-the-air broadcast television service to connect to the wider world. For example, SOA cites the example of K04LJ, Atka, Alaska, which serves the east side of an island in the Aleutian chain. SOA states that, according to the 2010 US Census, the hamlet had a population of 61; the population is nearly entirely Aleut (Unangan) and the major industry is fishing. Another example cited by SOA is K13TD, White Mountain, Alaska, which serves an Igaluimuit (Fish River tribe) Inupiat village where subsistence activities are prevalent and necessary for survival. *Id.* at 4-5.

including the emergency alert system (EAS), across much of rural Alaska.<sup>15</sup> SOA maintains that the Stations are part of a network of over 200 analog TV translator stations that receive programming via a satellite from an uplink at the University of Alaska – Fairbanks and then broadcast an over-the-air signal to the local communities.<sup>16</sup> The Stations air a mix of programming, Alaskan produced news and public affairs, emergency alert and weather information provided by the National Oceanic and Atmospheric Administration (NOAA), and educational and informational programming from a variety of sources.<sup>17</sup> According to SOA, it has been the responsibility of the remote local communities and volunteers from those communities to maintain the Stations.<sup>18</sup>

5. *Digital Construction Efforts.* SOA’s Department of Administration (DOA) has received capital appropriations to construct the ARCS digital facilities.<sup>19</sup> When the conversion project began in 2013, digital upgrades for all of the SOA’s analog TV translator stations were expected to be completed in three to four years – between 2016 and 2017.<sup>20</sup> However, only 86 of SOA’s analog TV translators have deployed digital facilities to date. SOA states that construction of the digital facilities for the remainder of its analog TV translators encountered many challenges that delayed construction.<sup>21</sup> Because of the extreme remoteness, limited communications, small population, and extreme weather of these remaining communities, not all of the “deployed” equipment was ever operational.<sup>22</sup> SOA states that over 90 of the stations’ transmitter sites required major infrastructure improvements/repairs and/or had special geophysical or community-related challenges that made upgrades more difficult.<sup>23</sup> Almost none of these communities is connected to the road system and some have less than 100 residents with little or no local government.<sup>24</sup>

6. In total, SOA has 243 stations that either have converted from analog or still need to convert to digital. Of these, SOA reports that approximately:

- 91 of its analog TV translator stations have already been converted to digital or have digital equipment on site and are poised to convert to digital by the digital transition deadline.<sup>25</sup>
- 74 analog TV translator stations were never earmarked for digital conversion, do not have digital construction permits, and SOA does not plan to convert them to digital.<sup>26</sup> While SOA has not confirmed the operational status of all of these stations, most are silent and the remaining operating stations will continue operating until the analog termination deadline at

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<sup>15</sup> *Id.* at 1-2.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Waiver Supplement at 2.

<sup>23</sup> *Id.* at 1-2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 3. We note that any construction permit for which construction has not been completed and for which an application for license or extension of time has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission. 47 CFR § 74.788(b).

<sup>26</sup> Waiver Supplement at 3.

which time they will cease operations. SOA plans to allow all of these stations' licenses to automatically be cancelled after 11:59 pm on July 13, 2021.<sup>27</sup>

- 78 analog TV translator stations, which includes the Stations at issue here, were earmarked for digital conversion, but none have received digital equipment to date to complete their conversion.<sup>28</sup> Of those 78 stations, 15 are operational (i.e. the Stations that are the subject of this Order).<sup>29</sup>

7. SOA states that the Station's facilities are located at sites where conditions make them more difficult to deploy and/or make operational.<sup>30</sup> For example, SOA states that, after more than thirty years of service, many of the stations, particularly the remote sites, have equipment that has become degraded by long exposure to extreme conditions.<sup>31</sup> Many are suffering the effects of vandalism, corrosion, high-wind damage, and shifting foundations from freeze/thaw cycles.<sup>32</sup> Many sites no longer have local support for housing, power, and operational maintenance. SOA maintains that these issues require that digital upgrades at many sites will require more than just a digital transmitter to replace the old analog transmitter and additional infrastructure repairs and operational establishment will be necessary.<sup>33</sup> SOA also cites to the fact that most of these communities are not connected to Alaska's very limited road system and most of these communities consist of fewer than 300 residents.<sup>34</sup> These facts are exacerbated by Alaska's climate and short construction period, which generally only lasts for 12 weeks from June through August. Taken together, these circumstances make construction of new digital facilities very challenging and adds layers of difficulty not faced by other LPTV/TV translator licensees.<sup>35</sup>

8. *Waiver Request.* SOA contends that good cause exists for waiver of the analog termination deadline for its 15 analog TV translator stations that are currently operational and will not be able to complete their digital conversion by the digital transition deadline.<sup>36</sup> SOA asserts there are considerations of hardship, equity, and effective implementation of the underlying policy rationale for the digital transition that justify the instant waiver request.<sup>37</sup> SOA maintains that waiver will serve the public interest by maintaining the sole over-the-air broadcast television service to the remote rural and Alaskan bush communities served by these 15 operational analog stations and that the public has come to depend upon for not just enjoyment, but critical, life-saving, information.<sup>38</sup> Moreover, SOA argues, the waiver will not harm other broadcasters or users of the TV spectrum or defer the analog termination deadline for other analog TV translators. SOA maintains such relief is necessary because these highly remote, rural, bush communities in Alaska depend on SOA's stations as their only over-the-air broadcast television

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<sup>27</sup> *Id.* See *supra* notes 9 and 10.

<sup>28</sup> Waiver Supplement at 3.

<sup>29</sup> *Id.*

<sup>30</sup> Waiver Request at 3.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> SOA also notes that, like other State-owned broadcasters, it is required to follow the State-mandated procurement and contracting procedures that include the requirement that contractors be hired through a competitive "request for proposal" system. Waiver Supplement at 1. The procurement process is very time consuming and can take many months to complete. *Id.*

<sup>36</sup> Waiver Request at 3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* See *supra* para. 4 (discussing the programming aired by the Stations).

service. SOA states that the purpose of this waiver is to continue existing broadcast television service to these remote areas until the time that the digital transition can be implemented at these difficult to reach station sites which are often only accessible for extremely limited portions of the year and in some cases only by air.<sup>39</sup>

9. SOA continues that the public interest would be served by waiving the analog termination deadline because, absent a waiver, these rural and remote populations would lose their only over the air broadcast service as of July 13, 2021.<sup>40</sup> Although SOA recognizes that the Commission had sound public policy reasons for setting the digital transition deadline for July 13, 2021, it believes that those public policy rationales would be subverted by requiring the Stations to cease analog operation given their situation.<sup>41</sup> Instead of realizing the benefits of digital broadcast service and despite SOA's efforts to convert these stations to digital, SOA notes that these communities would be left with no broadcast television service at all.<sup>42</sup> Therefore, SOA concludes, waiver of the analog termination deadline would permit continuation of broadcast service to citizens of the United States that have no other local broadcast television stations, no broadband connections, and in many instances, no roads to or from their communities.<sup>43</sup>

### III. DISCUSSION

10. We grant SOA's waiver request and permit the Stations to continue operating in analog past the July 13, 2021 analog termination deadline until January 10, 2022. A waiver of our rules is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.<sup>44</sup> We find that a grant of SOA's request for a limited waiver of section 74.731(m) of our rules<sup>45</sup> is justified due to a novel set of facts and circumstances that have prevented SOA from completing the digital transition for these operational analog Stations and given the remote Alaskan communities for which these Stations are the sole source of video programming.

11. Based on the facts presented in the waiver petition, we find that allowing the Stations to continue analog operations for a brief period of time after the July 13, 2021 analog termination deadline, while SOA completes their digital transition, will provide substantial public interest benefits. As it attempted to convert the Station's analog facilities to digital, SOA encountered construction delays that were beyond its control related to the nature of its State-wide translator network. As noted above, the Stations' transmitter facilities are located at some of the most remote locations in the United States, which create difficulties in undertaking the necessary engineering changes to prepare for digital operations. For example, most communities where the Stations are located are not connected to Alaska's very limited road system. Moreover, necessary tower site work can only be completed for a short window of "Alaska Summer" lasting approximately 12 weeks a year. All of these challenging circumstances, which include

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<sup>39</sup> *Id.* at 4-5.

<sup>40</sup> *Id.* at 5.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

<sup>45</sup> 47 CFR §§ 73.616(d), 73.3700(b)(4)(iii).

many beyond SOA's control, have contributed to unprecedented delays in completing the Stations' digital conversion.

12. Significantly, allowing the Stations to continue to operate in analog will ensure the continued provision of local over-the-air television service to isolated, rural, and potentially impoverished communities in Alaska, many of whom rely on the Stations as their sole television service. The Stations' programming is vital to the lives of the communities they serve as they provide important news, public affairs, weather, and EAS alerts.<sup>46</sup> These isolated communities are not served by cellular telephone, broadband or cable service and because of their extreme Northern locations, are not able to reliably receive satellite service. SOA's State-wide network of analog TV translator stations is oftentimes the only connection to the outside world for these Alaskan communities. Therefore, grant of SOA's waiver would relieve significant hardship caused by forcing the Stations to terminate analog operations and cutting off these remote communities from their sole source of entertainment, news, public affairs, and most importantly emergency and weather information that is critically important to their daily lives and survival.

13. We find that there will be little if any impact or burden on other television broadcasters or the overall LPTV digital transition by allowing a very small number of rural Alaskan LPTV/translator stations to continue to operate in analog for a limited period of time. The Stations' continued analog operations will not prevent other Alaskan television stations from proposing new or expanded digital television service. Because the Stations will be flash cutting to digital on their existing analog channels, and not relinquishing their analog channels and converting to a new digital companion channel, the Stations are not holding up the return of any television frequencies that could be used by other television broadcasters. As such, we fail to find any other Alaska television broadcaster will be impacted by grant of SOA's waiver.

14. Moreover, grant of SOA's waiver will not harm the overall LPTV digital transition and the underlying policy behind it. While we use this opportunity to reaffirm our finding that the July 13, 2021 "hard" analog termination deadline will ensure that the public is able to obtain the benefits of digital television,<sup>47</sup> we find this effort will not be undermined by allowing in this case a small number of operational TV translator stations in rural Alaskan communities that provide the sole source of over-the-air television service to continue to operate in analog for a limited period of time. Failure to take this action would require these analog stations go silent on July 13, 2021, and risk cutting these communities off from the outside world. We note that the Commission has previously recognized the challenges facing Alaska communication providers when considering whether to grant requests for waiver or relief in other contexts.<sup>48</sup> Therefore, we conclude that strict compliance with the analog termination deadline rule would not serve the public interest and that waiver is justified given the facts of this particular case.

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<sup>46</sup> See Waiver Request at 4 and *supra* para. 4 (discussing the programming aired by the Stations).

<sup>47</sup> See *LPTV DTV Second R&O*, 30 FCC Rcd at 10738-9, para. 12.

<sup>48</sup> See, e.g., *Amendment of Section 73.622(i) - Post-Transition Table of DTV Allotment (Anchorage, Alaska)*, Report and Order, 32 FCC Rcd 3294, para. 2 (MB 2017) (citing the remote location and lack of reliable power source at station's transmission site as factors weighing in favor of granting a waiver of the freeze on filing petitions for rulemaking for full power television stations to change channels); *Fireweed Communications LLC*, Letter Order, 31 FCC Rcd 6997, 7001 (MB 2016) (citing the unique terrain and characteristics of television markets in Alaska as a factor in granting a "failing station" multiple ownership waiver); *Petition of General Communication, Inc. for Waiver of Certain Channelization and Other Restrictions on Common Carrier Fixed Point-to-Point Operations Between 6425 and 7125 MHz*, Order, 31 FCC Rcd 11792, 11797, para. 5 (WTB 2016) (citing unique circumstances including Alaska's large size, varied terrain, harsh climate, isolated populations, limited availability of personnel to construct networks and shortened construction season as factors in granting Upper 6 GHz band channelization waiver).

15. Also pending before the Commission are applications filed by SOA for extension of the Stations' digital construction permits.<sup>49</sup> For similar reasons, we grant the Stations' extension applications and extend their digital construction permit expiration dates to January 10, 2022. We will require that SOA submit a progress report on October 13, 2021, detailing the status of the digital construction for the Stations.

16. Finally, we delegate authority to the Media Bureau to consider future requests seeking similar waiver and relief consistent with the considerations included herein.

#### IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, the State of Alaska's Requests for Waiver of section 74.731(m) of the Commission's rules, 47 CFR § 74.731(m) set forth in the Appendix, **ARE GRANTED**.

18. **IT IS FURTHER ORDERED** that the July 13, 2021 analog termination deadline for the analog television translators set forth in the Appendix **ARE MODIFIED to January 10, 2022**.

19. **IT IS FURTHER ORDERED** that the analog television translator stations set forth in the Appendix are required to cease analog operations **no later than 11:59 pm local time on January 10, 2022**.<sup>50</sup>

20. **IT IS FURTHER ORDERED** that the applications for extension of digital construction permits set forth in the Appendix **ARE GRANTED** and the digital construction permits **EXTENDED to January 10, 2022**. Additional time to construct may be sought only pursuant to the Commission's "tolling" rule.<sup>51</sup>

21. **IT IS FURTHER ORDERED** that, on October 13, 2021, the State of Alaska shall submit a progress report detailing the status of the digital construction for the stations set forth in the Appendix.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>49</sup> See Appendix.

<sup>50</sup> Absent a separate request for waiver all other SOA stations must cease analog operation no later than 11:59 pm local time on July 13, 2021.

<sup>51</sup> See 47 CFR § 73.3598(b). See also *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, DA 21-260 (rel. Mar. 4, 2021).

## APPENDIX

<b>Call Sign</b>	<b>City</b>	<b>Fac Id.</b>	<b>Extension LMS File No.</b>	<b>Construction Permit LMS File No.</b>
K07RK	ST. MARYS	11552	0000146918	BDFCDVL-20141223AAQ
K13TD	WHITE MOUNTAIN	62370	0000146907	BDFCDVL-20141229AWA
K09QX	ST. MICHAEL	62489	0000146914	BDFCDVL-20141223ABG
K09RE	ST. GEORGE	62508	0000146919	BDFCDVL-20141223AAO
K07ST	WOMENS BAY	62525	0000146910	BDFCDVL-20141015ADG
K11SD	EEK	62541	0000146924	BDFCDVL-20141113AGA
K04LJ	ATKA	62542	0000146925	BDFCDVL-20141024ADE
K07TH	LIME VILLAGE	62548	0000146927	BDFCDVL-20141215ABZ
K13SV	PEDRO BAY	62563	0000146923	BDFCDVL-20141222ABJ
K03GL	KING MOUNTAIN, ETC.	62580	0000145181	BDFCDVL-20141120AEX
K04LE	STEBBINS	62668	0000146912	BDFCDVL-20141229ADC
K09RB	ST. PAUL	62691	0000146913	BDFCDVL-20141223ABH
K04KV	UNALASKA	62760	0000146911	BDFCDVL-20141229AGV
K13SM	SLANA	62849	0000146920	BDFCDVL-20141229ADA
K13SA	PORT HEIDEN	62850	0000146922	BDFCDVL-20141230AAQ