

CRS Report for Congress

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Digital Television: An Overview

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Summary

Digital television (DTV) is a new television service representing the most significant development in television technology since the advent of color television in the 1950s. DTV can provide sharper pictures, a wider screen, CD-quality sound, better color rendition, and other new services currently being developed. The nationwide deployment of digital television is a complex and multifaceted enterprise. A successful deployment requires: the development by content providers of compelling digital programming; the delivery of digital signals to consumers by broadcast television stations, as well as cable and satellite television systems; and the widespread purchase and adoption by consumers of digital television equipment.

The Telecommunications Act of 1996 (P.L. 104-104) provided that initial eligibility for any DTV licenses issued by the Federal Communications Commission (FCC) should be limited to existing broadcasters. Because DTV signals cannot be received through the existing analog television broadcasting system, the FCC decided to phase in DTV over a period of years, so that consumers would not have to immediately purchase new digital television sets or converters. Thus, broadcasters were given new spectrum for digital signals, while retaining their existing spectrum for analog transmission so that they can simultaneously transmit analog and digital signals to their broadcasting market areas.

Congress and the FCC set a target date of December 31, 2006 for broadcasters to cease broadcasting their analog signals and return their existing analog television spectrum to be auctioned for commercial services (such as broadband) or used for public safety communications. However, the Balanced Budget Act of 1997 (P.L. 105-33) allowed a station to delay the return of its analog spectrum if 15% or more of the television households in its market did not subscribe to a multi-channel digital service and do not have digital television sets or converters. Given the slower-than-expected pace at which digital televisions have been introduced into American homes, few, if any, observers believed that the goal of digital televisions in 85% of American homes by 2006 would be reached, with the result that television stations would continue to broadcast both analog and digital signals past the 2006 deadline.

A key issue in the Congressional debate over the digital transition has been addressing the millions of American over-the-air households whose existing analog televisions will require converter boxes in order to receive digital signals when the analog signal is turned off. The Deficit Reduction Act of 2005 (P.L. 109-171), signed by the President on February 8, 2006, sets the digital transition deadline at February 17, 2009, and allocates up to \$1.5 billion for a digital-to-analog converter box program to be administered by the Department of Commerce. Remaining digital transition issues — not addressed by the Deficit Reduction Act of 2005 — include whether Congress should mandate or permit “must carry” requirements for digital multicasts, “downconversion” of broadcasted digital to analog signals for cable and satellite households, and copyright protection technologies such as the “broadcast flag” and the “analog hole.”

This report will be updated as events warrant.

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Digital Television: An Overview

Most Recent Developments

On May 1, 2006, Senator Stevens introduced S. 2686, the “Communications, Consumer’s Choice, and Broadband Deployment Act of 2006.” Title VII of S. 2686 (“Digital Television”) contains a number of provisions related to the digital television transition. These include mandating DTV consumer education, requiring large cable operators to provide to their customers their local broadcasters’ digital signals in both digital and “downconverted” analog formats through February 14, 2014, and giving the FCC statutory authority to proceed with its broadcast flag rule, with certain limitations.

The Deficit Reduction Act of 2005 (P.L. 109-171) was signed by the President on February 8, 2006. Title III of the act sets the digital transition deadline at February 17, 2009, and allocates up to \$1.5 billion for a digital-to-analog converter box program to be administered by the Department of Commerce.

The Administration’s FY2007 budget proposal for the National Telecommunications and Information Administration requests \$45 million for three programs authorized by P.L. 109-171: \$15 million for the Digital-to-Analog Converter Box Program, \$15 million for Public Safety Interoperable Communications grants, and \$15 million for the New York City 9/11 Digital Transition.

What Is Digital Television?

Digital television (DTV) is a new television service representing the most significant development in television technology since the advent of color television in the 1950s. DTV can provide sharper pictures, a wider screen, CD-quality sound, better color rendition, multiple video programming or a single program of high definition television (HDTV), and other new services currently being developed. DTV can be HDTV, or the simultaneous transmission of multiple programs of standard definition television (SDTV), which is a lesser quality picture than HDTV but significantly better than today’s television.

The rationale often cited for the digital transition is that aside from offering superior broadcast quality to consumers, DTV will allow over-the-air broadcasters to offer the same kinds of digitally-based services (such as pay-per-view) currently offered by cable and satellite television providers. Additionally, it is argued that digital television uses the radiofrequency spectrum more efficiently than traditional analog television, thereby conserving a scarce resource (bandwidth) that can be used for other wireless applications.

There are three major components of DTV service that must be present in order for consumers to enjoy a fully realized “high definition” television viewing experience. *First*, digital programming must be available. Digital programming is content produced with digital cameras and other digital production equipment. Such equipment is distinct from what is currently used to produce conventional analog programming. *Second*, digital programming must be delivered to the consumer via a digital signal. Digital signals can be broadcast over the airwaves (requiring new transmission towers or DTV antennas on existing towers), transmitted by cable or satellite television technology, or delivered by a prerecorded source such as a digital video disc (DVD).¹ And *third*, consumers must have a digital television product capable of receiving the digital signal and displaying digital programming on their television screens. To receive digital broadcast signals, consumers can buy digital monitors accompanied with a set-top converter box (a digital tuner),² or alternatively, an integrated digital television with digital tuning capability already built in.

Role of Congress and the FCC

Congress and the Federal Communications Commission (FCC) have played major roles in the development of DTV. Starting in 1987, the FCC launched a decade-long series of proceedings exploring the potential and feasibility of a transition from conventional analog televisions to advanced television systems. While the original term used to describe the new television system was high definition television (HDTV), the FCC used a broader term — advanced television (ATV) — referring to any television technology that provides improved audio and video quality. After it became clear that ATV would be using digital signal transmission, the FCC began (in 1995) to use the term DTV (synonymous with ATV) to describe the new service more accurately.

In December 1996, after lengthy debate between television manufacturers, broadcasters, and computer firms, the FCC adopted a standard for DTV signal transmission based on recommendations of the Advanced Television System Committee (ATSC).³ The ATSC standard allows for 18 different video formats, of which four have subsequently been adopted for commercial use.⁴

¹ At present, commercially available DVD technology does not deliver digital high definition programming.

² Set-top converter boxes can also be used to enable conventional analog televisions to receive digital signals over the air. However, analog televisions hooked up to digital tuners cannot display high definition pictures.

³ *FCC Fourth Report and Order In the Matter of Advanced Television Systems and Their Impact on Existing Television Service*, MM Docket No. 87-268, FCC 96-493, released December 27, 1996.

⁴ Four video formats are being used commercially by U.S. television producers and manufacturers. These four formats are described by the number of lines they produce per each picture frame, and whether they use interlaced (i) or progressive (p) scanning techniques. These are: 480i and 480p (suitable for SDTV broadcasts), and 720p and 1080i (HDTV). The progressive scan video format is more compatible with PC displays, while the interlaced scan is more compatible with analog television receivers.

Meanwhile, the Telecommunications Act of 1996 (P.L. 104-104) provided that initial eligibility for any DTV licenses issued by the FCC should be limited to existing broadcasters. Broadcasters would be issued DTV licenses while at the same time retaining their existing analog licenses during the transition from analog to digital television. The act provided that broadcasters must eventually return either their existing analog channel or the new digital channel. Also in the 104th Congress, a major debate took place over whether to direct the FCC to conduct auctions for the spectrum allocated for DTV. The FCC estimated the commercial value of the DTV spectrum to be between \$11 billion to \$70 billion. No legislation was enacted, however, and the FCC did not obtain the authority to auction the DTV licenses.

In 1997, the FCC adopted rules⁵ to implement the Telecommunications Act, and granted DTV licenses to some 1600 full power incumbent television broadcasters.⁶ The DTV licenses consist of 6 megahertz (MHZ) of unused spectrum within the VHF and UHF frequency bands. Because DTV signals cannot be received through the existing analog television broadcasting system (known as NTSC⁷) the FCC decided to phase in DTV over a period of years, so that consumers would not have to immediately purchase new digital television sets or converters. Thus, broadcasters were given 6 MHZ of new spectrum for digital signals, while retaining their existing 6 MHZ for analog transmission so that they can simultaneously transmit NTSC and DTV signals to their broadcasting market areas.⁸ The simultaneous broadcasting (“simulcasting”) of the same programs in both digital and analog modes was intended to allow viewers who have not yet purchased DTV sets or converters to continue to receive television programming during the transition to DTV.

⁵ *FCC Fifth Report and Order In the Matter of Advanced Television Systems and Their Impact on Existing Television Service*, MM Docket No. 87-268, FCC 97-116, released April 21, 1997.

⁶ A provision in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188, H.R. 3448, H.Rept. 107-481) addresses the digital conversion of full power television stations that received their analog licenses *after* the FCC allocated digital spectrum to existing analog stations in 1997. Section 531 requires the FCC to allot a digital channel to any requesting full-power television station that had an application pending for an analog television station construction permit as of October 24, 1991, and which had its application granted after April 3, 1997. Any station receiving digital spectrum under this provision is required to complete construction of its digital facility within 18 months, without the possibility of an extension. Stations are also prohibited from operating an analog signal on its designated digital channel. The bill’s conference report states that this provision will allow recent broadcast licensees to foster a digital audience during the transition period to digital television without having to terminate analog service, and that without this change, those stations would be denied the flexibility to operate an analog and a digital facility simultaneously in the near term, especially in major markets.

⁷ The National Television Systems Committee (NTSC) was the industry group that developed the currently used U.S. television standards. For a discussion of the difference between analog and digital signals, see CRS Report 96-401, *Telecommunications Signal Transmission: Analog vs. Digital*, by Richard M. Nunno.

⁸ Using digital technology, the DTV frequencies can be placed in the vacant portion of the same spectrum band currently allocated for analog (NTSC) television without interfering with analog television broadcasts.

The ruling required television stations receiving the DTV licenses to build their DTV facilities according to a schedule determined by the size of their markets. The FCC has granted extensions to licensees unable to meet the schedule due to unforeseeable or uncontrollable circumstances, such as an inability to secure tower locations for new antennas.

The FCC set a target date of 2006 for broadcasters to cease broadcasting the analog signal and return their existing analog television spectrum licenses to be auctioned for other commercial purposes. During the 105th Congress, the Balanced Budget Act of 1997 (P.L. 105-33) made the 2006 reversion date statutory, providing that a “broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006.” However, the act requires the FCC to grant extensions for reclaiming the analog television licenses in the year 2006 from stations in television markets where any one of the following three conditions exist:

- if one or more of the television stations affiliated with the four national networks are not broadcasting a digital television signal;
- if digital-to-analog converter technology is not generally available in the market of the licensee; or
- if at least 15% of the television households in the market served by the station do not subscribe to a digital “multi-channel video programming distributor” (including cable or satellite services) and do not have digital TV sets or converters.

The FCC continues to monitor the status of the DTV conversion of both commercial and noncommercial broadcast stations. On October 11, 2001, FCC Chairman Michael Powell announced the creation of an FCC Digital Television (DTV) Task Force to review the ongoing transition to DTV, and to make recommendations on how to facilitate the transition and promote the rapid recovery of broadcast spectrum for other uses.

The FCC is issuing periodic progress reports on the DTV buildout,⁹ and has the option of granting deadline extensions to broadcasters. On November 8, 2001, the FCC announced it would modify a number of its DTV transition rules, in order to facilitate and speed the DTV transition. The changes permit stations to initially build lower-powered (and less expensive) DTV facilities, while retaining their option to expand their coverage area as the digital transition progresses. Meanwhile, the FCC declined to issue a blanket extension of remaining DTV construction deadlines. However, the FCC will consider, in limited circumstances, individual requests for extensions due to financial hardship.

On April 4, 2002, FCC Chairman Michael Powell submitted, to the Chairmen of the House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation, a proposal for voluntary industry actions to speed the digital television transition.

⁹ The most recent progress report is contained in: *Second Report and Order and Second Memorandum and Order*, MM Docket No. 00-39, August 9, 2002, FCC 02-230, 41 p.

On August 8, 2002, the FCC announced actions intended to further encourage the roll-out of DTVs by the December 31, 2006 target completion date. Specifically, the FCC adopted a Second Report and Order and Second Memorandum Opinion and Order (FCC 02-230) which requires television receivers and receiving equipment (such as VCRs and DVD players/recorders) to include DTV reception capability (see section in this report, “Mandating Digital Tuners” for further details).

On September 10, 2003, the FCC adopted a Second Report and Order which adopts, with certain modifications, an agreement between the cable and consumer electronics industries ensuring the compatibility between cable systems and commercial electronics devices (see section in this report, “Cable/DTV Interoperability Standards.”)

On November 4, 2003, the FCC adopted a Report and Order and Further Notice of Proposed Rulemaking (FCC 03-273) which gives broadcasters the option of inserting a “broadcast flag” into their over-the-air broadcast transmissions (see section in this report, “Copyright Protection Technology” for further information).

On January 27, 2003, the FCC initiated its Second Periodic Review of the DTV transition. The Notice of Proposed Rulemaking (FCC 03-8) seeks comment on a number of issues related to the DTV conversion.¹⁰ Included in the NPRM is the issue of how the FCC will determine whether 85% of American households have access to digital signals by 2006. The NPRM also reopens the issue of public interest obligations of DTV broadcasters.

On August 4, 2004, the FCC adopted a Report and Order (FCC-04-192) which implements several steps identified in the Second Periodic Review. These include commencing an open channel election process, establishing deadlines for broadcasters to increase power, and resolving outstanding operational issues.¹¹

On October 4, 2004, the FCC announced a DTV consumer education initiative. The FCC announced a new website — [<http://www.dtv.gov>] — which is intended as a comprehensive source of information for consumers on the DTV transition.

Status of the DTV Buildout

The nationwide buildout of digital television is a complex and multifaceted enterprise. A successful buildout requires: the development by content providers of compelling digital programming; the delivery of digital signals to consumers by broadcast television stations, as well as cable and satellite television systems; and the widespread purchase and adoption by consumers of digital television equipment.

¹⁰ See Notice of Proposed Rulemaking, *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, FCC 03-8, Jan. 27, 2003.

¹¹ FCC News Release, “FCC Takes Next Steps to Promote Digital TV Transition,” August 4, 2004.

Creation of Digital Programming. Digital programming is created with digital cameras and other digital production equipment. Digital content tends to favor more “visual” types of programming — such as sports events or movies — which take full advantage of the high-definition viewing experience. Currently, the amount of available digital programming is limited, but gradually becoming more widespread. Among broadcast networks, CBS produces the largest amount, with digital high-definition broadcasts available in all of its prime time scripted entertainment series, as well as many of its national sports broadcasts. ABC is offering HDTV broadcasts in nearly all of its prime time schedule and in some of its sports broadcasts. PBS has also been active, producing digital programming as well as offering multicasts over digital channels in some local markets. NBC and FOX are offering digital programming as well (although not necessarily in high definition), and FOX plans to transmit at least 50% of its prime time schedule in HDTV by the 2004-2005 season. Cable networks producing (or planning to produce) digital programming include HBO, Showtime, A&E, Discovery, ESPN, Bravo, Cinemax, HDNet, In Demand, and Madison Square Garden.¹²

Two factors generally inhibit content providers from accelerating the production of digital programming. First, because relatively few households have digital televisions, networks have a diminished incentive to invest the money to produce digital content. Some digital programming is being produced by networks in sponsorship/partnership with consumer electronics companies who manufacture digital televisions. Second, content providers (e.g. networks and movie studios) are reluctant to provide digital programming until a digital copyright standard is in place.

Delivery of Digital Signals. Currently, there are three ways digital programming is being delivered to consumers. Digital signals are: 1) broadcast over the airwaves; 2) transmitted over channels provided by satellite television systems; and 3) provided via digital cable service in a growing number of markets.

Broadcasting. According to the National Association of Broadcasters (NAB), as of May 5, 2006, there were 1,550 stations (both commercial and public) broadcasting digital signals in 211 markets.¹³ This represents about 91% of the nation’s approximately 1,700 full-power television stations. The 211 markets currently receiving digital transmissions cover over 99% of U.S. TV households. Television stations must construct new facilities and purchase new equipment in order to transmit digital signals. According to NAB, costs range from \$8-\$10 million

¹² Cable & Telecommunications Overview, 2001, June 2001, National Cable Television Association.

¹³ For latest statistics, see [<http://www.nab.org/newsroom/issues/digitaltv/dtvstations.asp>].

to fully convert a station to digital operation.¹⁴ NAB estimates that the total cost of the transition for broadcasters is \$10 to \$16 billion.¹⁵

As of February 1, 2006, the FCC has granted a construction permit or license to 1,698 stations, about 98.6% of the total number of DTV allotments.¹⁶ Approximately three-quarters of the 1,240 full-power commercial stations did not meet the May 1, 2002 conversion deadline. A total of 843 commercial stations requested from the FCC an extension of the May 2002 deadline in order to complete construction of their DTV facilities. So far, 772 have been granted and 71 have been admonished. Of those stations granted extensions, 602 filed requests for second extensions. Of this number, 535 extension requests have been granted, 67 have been dismissed, and the rest remain pending. A third extension was requested by 141 stations; 104 extensions were granted, action was deferred for 30 satellite stations, and 7 stations were admonished. Meanwhile, 214 noncommercial educational stations requested extension of the May 1, 2003 buildout deadline. The FCC has granted all of those extension requests; 134 stations filed for second extensions with 129 granted.¹⁷

Satellite. Satellite television is currently provided to over 22 million American households. Two major companies offer direct broadcast satellite (DBS) television service in the United States: EchoStar's DISH Network and Hughes' DirecTV. Hughes and EchoStar offer eight and nine high definition channels, respectively. Neither service offers local high definition broadcast channels in most markets. Satellite TV customers need added equipment (a slightly bigger satellite dish and either a set-top box or built-in satellite HDTV reception capability) in order to receive high-definition programming on their digital televisions.

Cable. Initially, cable companies had been reluctant to carry channels of digital and high definition programming (thereby displacing some existing channel offerings) until more consumers had the digital television equipment necessary to view digital programming.¹⁸ The reluctance of cable companies to carry digital

¹⁴ Testimony of Ben Tucker, Chairman of NAB Television Board, in: U.S. Congress, House, "Digital Television: A Private Sector Perspective on the Transition," Hearing Before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, March 15, 2001, 107th Cong., 1st Sess., p. 72.

¹⁵ Testimony of Edward O. Fritts, NAB President and Chief Executive Officer, before the House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, June 2, 2004. Some critics dispute the validity of these cost estimates. See Snider, J.H., *Speak Softly and Carry A Big Stick: How Local TV Broadcasters Exert Political Power*, iUniverse, Inc., New York, pp. 331-345.

¹⁶ See [<http://www.fcc.gov/mb/video/files/dtvsum.html>].

¹⁷ Ibid.

¹⁸ Many cable (and both DBS commercial services) are "digital." However, "digital cable" generally refers to technology which converts analog programming to a digital signal which is transmitted to the consumer and then converted back to analog form for television viewing. "Digital cable" allows cable companies to provide more channels, as well as high
(continued...)

programming has changed, however, as cable providers in many markets have begun to implement plans to carry digital or high-definition channels. According to the National Cable & Telecommunications Association (NCTA), as of September 2005, consumers in 198 (out of 210) local TV markets can now receive a package of HDTV services from their cable operator. Cable systems providing HDTV pass 96 million U.S. television households (out of a total 110 million) and reach all 100 of the biggest TV markets.¹⁹

Consumer Purchase of DTV Products. DTV products are now available from several manufacturers that offer varying features and technical characteristics. Currently, most consumers who purchase DTV products are purchasing digital television monitors, available at prices ranging from about \$500 to \$1,000, depending on screen size and other features. Digital monitors are primarily being used by consumers to watch DVDs,²⁰ regular analog television, and digital programming over a cable or satellite television system. A digital monitor must be coupled with a set-top digital receiver or tuner (costing in the range of \$300 to \$500) in order to receive digital broadcast signals.²¹ An integrated DTV, which contains a built-in digital tuner, is sold at prices ranging from about \$1,000 to \$10,000. Over the past several years, prices for DTV monitors and receivers have dropped markedly. As the market for DTVs expands, prices are expected to decrease further.²²

According to the Consumer Electronics Association (CEA), DTV shipments in 2005 (from suppliers to retail outlets) totaled 12 million units and \$17 billion in revenue, a 60% increase over 2004.²³ While growth has occurred, the penetration

¹⁸ (...continued)

speed (broadband) Internet service. However, the “digital” signals transmitted over cable systems use different digital standards than the DTV standard used by broadcasters and current DTV sets; therefore current digital cable services currently cannot be directly received by DTV sets.

¹⁹ National Cable & Telecommunications Association, “Cable’s HDTV Deployment,” January 2006, available at [<http://www.ncta.com/images/HDTVkit-Deploy-final2.pdf>].

²⁰ Commercially available DVD technology does not yet support digital programming. However, current DVDs viewed over a DTV provide a significantly higher quality picture than DVDs viewed over regular analog televisions.

²¹ Many consumers are asking whether their current analog TV sets will become obsolete with the advent of DTV. Consumers can continue to use analog TV sets until the broadcasters return the analog TV licenses to the FCC, after which, a set-top digital converter box could be used to enable the analog TV set to receive the DTV signal. Digital converters, however, will only enable the display of pictures comparable in quality to existing sets. They will not provide HDTV-quality images, or other new services that may come with DTV.

²² Testimony of David Arlin, Thomson Multimedia Inc. on behalf of the Consumer Electronics Association, in: U.S. Congress, House, “Digital Television: A Private Sector Perspective on the Transition,” Hearing Before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, March 15, 2001, 107th Cong., 1st Sess., p. 47.

²³ Consumer Electronics Association, Press Release, “Super Bowl XL Kicks Off the Year (continued...)”

of DTVs into the American home remains relatively small, with approximately 13% of the 110 million American households having DTVs,²⁴ and about 2% having the ability to receive digital over-the-air signals.²⁵

Policy Issues Surrounding the Digital Transition

The goal of the FCC and Congress is to complete the transition to DTV as quickly as possible, so that NTSC (analog) spectrum can be reclaimed and reallocated for other purposes. Some of the NTSC spectrum will be auctioned for commercial wireless services, and some of it will be used for new public safety services (the FCC has already designated some of the analog TV spectrum for public safety use).²⁶

The key issue for Congress and the FCC has been: what steps, if any, should be taken by government to further facilitate a timely, efficient, and equitable transition to digital television? To address this question, Congress and the FCC have confronted a highly complex policy landscape, involving different industries, technologies, and interests, including content providers, commercial and noncommercial television broadcasters, cable and satellite television providers, consumer electronics manufacturers and retailers, and consumers.

The following sections in this report — on activities and issues in the 108th and 109th Congresses — discuss issues that have been primary considerations in the Congressional debate on the digital television transition. Additionally, **Appendix 1** provides background information on a complex array of policy issues related to the digital television transition. These include digital “must carry,” mandating digital tuners, copyright protection technology, cable/DTV interoperability, digital conversion of public broadcasting stations, digital conversion of low power television stations, public interest obligations of DTV broadcasters, and others.

Activities in the 108th Congress

A number of bills were introduced into the 108th Congress, relating in some way to digital television. Some urged Congress to require broadcasters to return the analog spectrum on “a date certain.” Under this approach, spectrum would be freed up for other uses. Among legislation in the 108th Congress, the HERO Act (H.R. 1425 and within 9/11 Commission omnibus bills H.R. 5024, H.R. 5040, and S. 2774)

²³ (...continued)

of HD, says CEA,” January 30, 2006, available at [http://www.cea.org/Press/CurrentNews/press_release_detail.asp?id=10941]

²⁴ Consumer Electronics Association, “Household Penetration of CE Products Soars in 2005,” Press Release, May 17, 2005.

²⁵ Snider, J.H., *Speak Softly and Carry A Big Stick: How Local TV Broadcasters Exert Political Power*, iUniverse, Inc., New York, p. 582.

²⁶ See CRS Report RL32622, *Public Safety, Interoperability, and the Transition to Digital Television*, by Linda K. Moore.

would have prohibited any delay in reassigning the 24 MHz for public safety purposes, and required those frequencies to be operational by January 1, 2007.

During March and April 2004, another digital transition proposal was informally circulated by the Media Bureau of the FCC.²⁷ Under this proposal, the transition deadline would be moved from 2006 to 2009. Cable and satellite providers would be required to carry a broadcaster's digital signal only, but could — if the broadcaster so chooses — down-convert the digital signal to an analog signal that cable or satellite customers could watch on their analog televisions. Under this scenario, according to the Media Bureau proposal, cable and satellite TV households watching down-converted digital signals on their analog sets would be counted toward the 85% statutory threshold required in order for broadcasters to return to the government their valuable analog spectrum, which can then be auctioned and/or assigned for other purposes.

The commercial broadcasting industry expressed strong opposition to the Media Bureau's proposal.²⁸ According to the commercial broadcasters, the proposal would discourage the development of digital television services (such as HDTV and multicasting) and remove the incentive for consumers to purchase DTVs. Additionally, they argue, if analog spectrum is reclaimed under the Media Bureau proposal, TV households that are exclusively "over-the-air" — many of whom are economically disadvantaged — would lose their television service altogether unless they purchased DTVs, converter boxes, or cable or satellite television subscriptions. In response to these criticisms, Kenneth Ferree, former head of the Media Bureau, argues that the development of digital services will not be adversely impacted because market forces will ensure that popular stations will likely be carried by cable and satellite TV providers in both digital and analog form by 2009. Additionally, suggests Ferree, economically disadvantaged over-the-air households could receive federal subsidies (derived from reclaimed spectrum auction proceeds, for example) for purchasing converter boxes, thereby ensuring that these households will continue to receive television service.²⁹

During the summer of 2004, Congress held three hearings on the digital television transition. On June 2, 2004, the House Energy and Commerce Committee, Subcommittee on Telecommunications and the Internet, held a hearing on the Ferree proposal — "Advancing the DTV Transition: An Examination of the FCC Media Bureau Proposal." A June 9, 2004 hearing held by the Senate Committee on Commerce, Science and Transportation — entitled, "Completing the Digital Television Transition," — also examined the Ferree proposal and other digital transition issues including the possibility of consumer subsidies for converter boxes.

²⁷ The Media Bureau's digital transition proposal has not yet been released as a formal document.

²⁸ Written Ex Parte Submission in MB Docket Nos. 03-15 & 98-120, April 15, 2004, Available at [<http://www.nab.org/Newsroom/PressRel/Filings/LetterReFerreePlan041504.pdf>].

²⁹ Boliek, Brooks, "Feds: No analog TV by '09," *Hollywood Reporter*, April 15, 2004.

Finally, the House Subcommittee on Telecommunications and the Internet held another hearing on July 21, 2004, looking specifically at lessons learned from Berlin, Germany, which successfully underwent a transition to digital television in 2003. The hearing, entitled, “The Digital Television Transition: What We Can Learn from Berlin,” featured the release of a General Accountability Office (GAO) report entitled, *German DTV Transition Differs From U.S. Transition in Many Respects, but Certain Key Challenges Are Similar*. The GAO identified three elements responsible for Berlin’s successful digital transition: implementing extensive consumer education, providing subsidies to low-income households for converter boxes, and setting a near-term, widely recognized shut-off date for analog TV service.³⁰

On July 22, 2004, the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) released its final report. The Commission recommended that Congress support legislation “which provides for the expedited and increased assignment of radio spectrum for public safety purposes.” In response to this recommendation, on September 21, 2004, Senator John McCain introduced S. 2820, the SAVE LIVES Act. S. 2820 would change the digital transition deadline from December 31, 2006 to December 31, 2008. Spectrum for public safety would be freed for use by first responders, and other spectrum would be available for commercial uses. Proceeds from the auctioning of commercial spectrum would be credited to a Digital Transition Consumer Assistance Fund. The Fund would be used to establish a \$1 billion digital transition program, administered by the Secretary of Commerce, which would subsidize consumers who continue to rely exclusively on over-the-air broadcasts with analog televisions. The program would give priority to low-income households, and would provide assistance for purchasing digital-to-analog converter boxes or other technologies which would allow consumers to continue receiving television signals.

S. 2820 also required labeling of analog televisions (with the label stating it is unable to receive digital signals without a converter box), directs the Department of Commerce (in consultation with the FCC) to submit a report to Congress recommending a consumer education program on the digital transition, and requires the FCC to issue final decisions on its proceedings regarding DTV must-carry and public interest obligations.

During the September 22, 2004 markup of S. 2820 in the Senate Committee on Commerce, Science and Transportation, an amendment was offered by Senator Conrad Burns which sets a digital transition deadline (December 31, 2007) *only* for spectrum that has been designated for public safety, and provides that the FCC may waive the deadline in a given market “to the extent necessary to avoid consumer disruption while ensuring the ability of relevant public safety entities to use such frequencies.” The Burns amendment was subsequently adopted by the Committee.

³⁰ See U.S. General Accountability Office, *German DTV Transition Differs From U.S. Transition in Many Respects, but Certain Key Challenges Are Similar*, GAO-04-926T, July 21, 2004. 22 p.

On September 29, 2004, Senator McCain offered a modified version of S. 2820 as an amendment to the National Intelligence Reform Act of 2004 (S. 2845). As in Committee, Senator Burns offered a modifying amendment to the McCain amendment. At the request of Senator McCain, the Senate approved by unanimous consent the McCain amendment as modified by the Burns amendment. The final version adopted into S. 2845 sets the digital transition deadline of December 31, 2007 only for spectrum that has been designated for public safety. Language regarding the FCC's authority to waive the deadline to avoid consumer disruption was modified to read: "only if all relevant public safety entities are able to use such frequencies free of interference by December 31, 2007, or are otherwise able to resolve interference issues with relevant broadcast licensee by mutual agreement."³¹ The Senate passed S. 2845 on October 6, 2004. Other provisions of S. 2820 relevant to digital television are retained within the Senate-passed version of S. 2845. However, the sections regarding the Digital Transition Consumer Assistance fund and the \$1 billion in consumer digital transition subsidies are moot, because the legislation limits the digital transition deadline only to public safety spectrum and does not authorize auctions of commercial spectrum currently used for analog television broadcasts. Also, labeling requirements would only go into effect if the FCC acts to set a hard deadline for the return of analog spectrum.

The House-passed version of S. 2845 (passed on October 16, 2004) contained a nonbinding provision (Section 5011) expressing the "sense of the Congress" that the 85% penetration test should be eliminated and that broadcasters should be required to cease analog transmissions by December 31, 2006 in order that analog spectrum can be returned for public safety and commercial uses. The conference report version of S. 2845 contained a digital television provision similar to the House language. Section 7501 states that it is the sense of Congress that "Congress must act to pass legislation in the first session of the 109th Congress that establishes a comprehensive approach to the timely return of analog broadcast spectrum as early as December 31, 2006" and that any delay in the adoption of such legislation will "delay the ability of public safety entities to begin planning to use this needed spectrum." The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) was signed into law on December 17, 2004.

Activities and Issues in the 109th Congress

During the first session of the 109th Congress, lawmakers debated when and how a "hard date" for the DTV transition might be implemented, thereby freeing reclaimed analog spectrum. Policy questions included should the then-existing statutory digital transition deadline of December 31, 2006, be implemented by modifying or removing the 85% digital penetration threshold requirement, or would a later and redefined transition deadline be more appropriate? Should the reclaiming of analog spectrum for public safety uses be singularly designated, or should it be included as part of a comprehensive approach to returning all of the analog spectrum? **Appendix 2** in this report provides a listing of DTV-related legislation introduced into the 109th Congress.

³¹ For more information on this issue, see CRS Report RL32622, *Public Safety, Interoperability and the Transition to Digital Television*, by Linda K. Moore.

Aside from ensuring that consumers enjoy the benefits of digital television, reclaiming the analog spectrum is a prime motivation in the desire of Congress and the FCC to complete the digital transition as soon as possible. A portion of reclaimed analog spectrum will be allocated for first responder communications, while the rest will be auctioned to the private sector for development and use of innovative telecommunications technologies such as wireless broadband.

Budgetary considerations are also an important factor. Auctioning the analog spectrum could raise revenues in the billions of dollars. Estimates of possible auction revenues vary, from \$10 billion³² to \$28 billion³³ to \$50 billion.³⁴ All or part of these auction proceeds could be used to reduce the federal budget deficit.³⁵

A key issue in the debate was addressing the millions of American over-the-air households whose existing analog televisions will require converter boxes in order to receive digital signals when the analog signal is turned off. According to the National Association of Broadcasters, there are currently 280.5 million analog televisions in United States. Of these, 73 million rely on over-the-air broadcasting.³⁶

Many policymakers asked whether should some form of financial assistance (subsidies or tax credits, for example) should be provided by the federal government to enable over-the-air households to purchase converter boxes or digital televisions. Should such assistance be provided to low-income households exclusively or to all households? Should subsidies, if warranted, be financed by proceeds garnered by auctioning the analog spectrum? And finally, how much funding would a subsidy program require, and how much revenue is likely to be raised by auctioning the commercial portion of the reclaimed analog spectrum?

At the request of the House Committee on Energy and Commerce, the Government Accountability Office (GAO) conducted a television characteristics survey involving 2,471 randomly selected American households. Based on the survey, GAO found that 19% or 21 million households rely exclusively on over-the-

³² Congressional Budget Office Cost Estimate, Digital Transition and Public Safety Act of 2005, October 24, 2005. CBO estimates revenue of \$12.5 billion from auction of spectrum vacated by analog broadcasters over the period 2006-2010. However, CBO estimates that offering this new spectrum for auction will lower anticipated receipts by \$2.5 billion for other spectrum already authorized for auction under current law. Thus, auctioning spectrum released by the digital transition would increase net spectrum auction receipts by \$10 billion.

³³ The Brattle Group, "700 MHz Band Spectrum Auction Could Yield \$28 B, Analysis Says," Press Release, May 18, 2005.

³⁴ Snider, J.H. and Michael Calabrese, New America Foundation, *Speeding the DTV Transition*, Spectrum Series Issue Brief #15, May 2004, p. 3.

³⁵ For more information on this issue, see CRS Report RS22306, *Spectrum Auctions and Deficit Reduction: FY2006 Budget Reconciliation*, by Linda K. Moore and Lennard G. Kruger.

³⁶ Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc. before the Federal Communications Commission, *In the Matter of Over-The-Air Broadcast Television Viewers*, MB Docket No. 04-210, August 11, 2004.

air television; 57% or 64 million households rely on cable; and 19% or 22 million have a subscription to DBS (satellite) television. Additionally, GAO found that low-income, non-White, and Hispanic households are more likely to rely on over-the-air television broadcasting.³⁷

GAO estimated that if a subsidy were needed only for over-the-air households, the cost could range from about \$460 million to \$2 billion, depending on the cost of the set-top box (from \$50 to \$100 per box) and whether subsidy recipients are limited to low-income households. Under this scenario, GAO is assuming that cable and satellite providers would convert broadcasters' digital signals to analog at the "head-end," such that cable and satellite TV consumers with analog sets would be able to receive the signal without a converter box.

Under a different scenario, GAO assumed that cable and satellite providers would deliver high-definition signals to the home, thereby requiring consumers with analog sets to purchase converter boxes. GAO estimated that if subsidies were available to cable and satellite subscribers as well as to over-the-air households, the cost would range from \$1.8 billion to over \$10 billion, again depending on the cost of the converter box and the use of means testing. The GAO estimate assumes a subsidy for one converter box per household — it should be noted that the vast majority of television households have more than one over-the-air analog television. Each analog television set would need its own converter box to be able to receive a digital signal.

The GAO cost estimates also do not include the cost of implementing a subsidy program, nor do they take into account what form a subsidy might take, be it a voucher, tax credit, rebate, government supplied equipment, or other means. On May 26, 2005, GAO testified before the House Energy and Commerce Committee on the administrative challenges that could arise in implementing a subsidy for DTV equipment.³⁸

Other organizations have offered differing estimates of the impact of the digital transition. The Consumer Electronics Association (CEA) has estimated that 11.5% of all television sets in the U.S. are used to view over-the-air programming, and that 12% of the 110 million U.S. TV households currently do not receive broadcast signals through cable or satellite. CEA projects — assuming a December 31, 2008

³⁷ See U.S. Government Accountability Office, Testimony before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, *Digital Broadcast Television Transition: Estimated Cost of Supporting Set-Top Boxes to Help Advance the DTV Transition*, February 17, 2005. Available at [<http://www.gao.gov/new.items/d05258t.pdf>].

³⁸ See U.S. Government Accountability Office, Testimony before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, *Digital Broadcast Television Transition: Several Challenges Could Arise in Administering a Subsidy Program for DTV Equipment*, May 26, 2005. Available at [<http://www.gao.gov/new.items/d05623t.pdf>].

analog cut-off date — that only 6.8% of TV households would lose their primary video signal by that future date.³⁹

On the other hand, in June 2005 the Consumers Union and the Consumer Federation of America issued a joint study⁴⁰ estimating that approximately 16 million households would lose all TV reception when analog signals are cut off. Based on an estimate of a \$50 price to purchase a converter box, the report concluded that “the direct government-imposed costs on consumers to preserve the usefulness of [analog television sets] would be \$3.5 billion or more.”

Meanwhile, the FCC has estimated that 15% of TV households are exclusively over-the-air.⁴¹

House Activities. On February 17, 2005, the House Energy and Commerce Committee, Subcommittee on Telecommunications and the Internet, held the first of a series of hearings on the digital transition. At the February 17th hearing, entitled, “The Role of Technology in Achieving a Hard Deadline for the DTV Transition,” witnesses discussed the need for a hard deadline and the possible costs of subsidizing over-the-air analog viewers. Other issues discussed at the February 17th hearing included whether labels warning of a possible analog signal shut-off should be required on new analog televisions purchased by consumers. Another key issue discussed was whether digital signals should be converted at the cable and satellite providers’ head-end, or — alternatively — at the subscriber’s home.

A second hearing, entitled, “Preparing Consumers for the End of the Digital Transition,” was held by the House Subcommittee on Telecommunications and the Internet on March 10, 2005. Witnesses spoke to the importance of educating retailers and consumers about the digital transition, and argued that raising public awareness is difficult without a certain transition deadline.

On May 26, 2005, the House Energy and Commerce Committee held a hearing on staff draft DTV legislation. Committee Chairman Joe Barton cited the importance of meeting budget reconciliation targets as a key factor in the Committee’s movement of legislation to hasten the DTV transition and raise revenues from auctioning the analog spectrum. While most (but not all) Committee Members and witnesses agreed with the setting of a hard 2008/2009 deadline for the digital transition, there was disagreement over the need for — as well as the size, scope, and mechanics of

³⁹ Statement of Gary Shapiro, President and CEO, Consumer Electronics Association, before the House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, May 26, 2005. Available at [<http://energycommerce.house.gov/108/Hearings/05262005hearing1533/Shapiro.pdf>].

⁴⁰ *Estimating Consumer Costs of a Federally-Mandated Digital TV Transition*, Consumers Union and Consumer Federation of America, June 29, 2005 at [http://www.hearusrnow.org/fileadmin/sitecontent/DTV_Survey_Report-Final_6-29-05.pdf].

⁴¹ FCC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Report FCC 05-13, MB Docket No. 04-227, released February 4, 2005.

— a subsidy program for digital-to-analog converter boxes funded with a portion of analog spectrum auction proceeds.

Digital Television Transition Act of 2005. On October 27, 2005, the House Energy and Commerce Committee approved the Digital Television Transition Act of 2005 as part of its submission to the House FY2006 budget reconciliation bill. The legislation sets a “hard” DTV transition deadline of December 31, 2008. CBO estimated \$10 billion in net receipts from auctioning vacated spectrum currently being used by broadcasters.⁴² The legislation would allocate a portion of auction proceeds as follows: \$990 million for a digital-to-analog converter box program, \$500 million for public safety interoperable communications grants, \$30 million for a New York City 9/11 digital transition fund, and \$3 million to assist digital conversion of low-power television stations. Remaining auction proceeds would be transferred to the Treasury for budget deficit reduction. The Digital Television Transition Act of 2005 does not contain language addressing the multicast must-carry issue, nor does it address other DTV issues such as the broadcast flag or DTV public interest obligations.

On November 3, 2005, the House Budget Committee reported the Deficit Reduction Act of 2005. Subtitle D (sections 3401-3413) is the Digital Television Transition Act of 2005. On November 18, 2005, the House passed the Deficit Reduction Act of 2005 (H.R. 4241). The following is a summary of major provisions.

DTV Transition Deadline. The legislation would shift the deadline for the DTV transition from December 31, 2006 to December 31, 2008. As of January 1, 2009, analog spectrum in the range of channels 52 through 69 would be recovered, and analog television service that is broadcast over the air would cease. The December 31, 2008 deadline would be a hard deadline — the legislation repeals the provision in current law allowing broadcasters to retain their analog spectrum indefinitely if 15% or more of television households are unable to receive digital signals. The legislation also directs the FCC to release final digital channel assignments to all full-power broadcast television stations by December 31, 2006, and to issue six month status reports on coordinating digital allotments with Canada and Mexico.

Auction of Recovered Spectrum. The legislation directs the FCC to conduct auctions for the licenses of recovered analog spectrum reclaimed from analog television service. Auctions will commence no later than January 7, 2008, and the FCC shall deposit auction proceeds no later than June 30, 2008. Recovered analog spectrum is defined as between channels 52 and 69 inclusive (698 through 806 MHz). This auction authority does not apply to analog spectrum to be made available for public safety services, nor does it apply to spectrum auctioned prior to the date of enactment of the legislation.

⁴² Congressional Budget Office Cost Estimate, Reconciliation Recommendations of the House Committee on Energy and Commerce, October 31, 2005, p. 12.

Digital-to-Analog Converter Box Program. The legislation directs that \$990 million from auction proceeds be placed in a “Digital Television Conversion Fund.” This Fund will be used by the National Telecommunications and Information Administration (NTIA) of the Department of Commerce to establish a digital-to-analog converter box program. Under this program, U.S. households may request up to two coupons worth \$40 each to be applied toward the purchase of digital-to-analog converter boxes. Coupons may be requested between January 1, 2008 and January 31, 2009. Retailers participating in the program would be required to undergo a certification process in order to be reimbursed by the Department of Commerce.

Other Expenditures of Auction Receipts. The legislation directs that \$500 million be deposited in a “Public Safety Interoperable Communications Fund,” which would be used by NTIA to establish a grant program to assist public safety agencies in the acquisition of, deployment of, or training for use of interoperable communications systems. The legislation directs that \$30 million be deposited in a “NYC 9/11 Digital Transition Fund,” which will reimburse New York City television broadcasters for costs incurred in the design and deployment of a temporary DTV broadcast system which will provide DTV service until a permanent facility is constructed. Finally, the legislation directs \$3 million into a “Low-Power Digital-to-Analog Conversion Fund” which will be used to compensate low power television stations (including Class A, translator, or booster television stations) for the cost of a digital-to-analog conversion device.

Consumer Education. The legislation would require manufacturers to put warning labels on analog televisions that inform consumers that such televisions will not be able to receive broadcast programming after the digital transition unless connected to a digital tuner, a digital-to-analog converter box, or cable, satellite or other multichannel video services. Similar warnings are required to be posted in stores by retailers, and run as public service announcements by broadcasters and cable and satellite providers. Finally, the FCC and the NTIA are required to engage in a public outreach program to educate consumers about the deadline for termination of analog television broadcasting and the options consumers have after such termination to continue to receive broadcast programming.

Preserving and Expediting Tuner Mandates. The legislation would move up the deadline by which all televisions with screens of 13 to 24 inches must contain built-in digital tuners. The FCC’s current deadline is July 1, 2007; the draft legislation would set an earlier deadline of March 1, 2007. Additionally, the draft legislation prohibits the FCC from further revising its existing schedule for mandatory DTV reception capability.

Digital-to-Analog Conversion and “Must Carry”. The legislation requires cable operators (with capacities over 550 MHz) and satellite television providers to offer to their customers broadcaster signals in both digital and analog formats for five years after the transition. The legislation, which allows cable and satellite providers to convert broadcaster signals at the “head-end,” would permit these providers to convert digital broadcasts to a standard definition format (which occupies less bandwidth than a high definition signal) if they so choose.

Senate Activities. On July 12, 2005, the Senate Commerce, Science and Transportation Committee held a hearing on the DTV transition. While consensus emerged on the need for a “hard” deadline for digital conversion, there was considerable disagreement among witnesses over the issue of cable and satellite carriage of multicast broadcast programming and whether Congress should mandate which local broadcast stations might receive “dual carriage” (both digital and analog signals) by cable providers.

S. 1932: *Digital Transition and Public Safety Act of 2005.* On October 20, 2005, the Senate Commerce, Science and Transportation Committee approved DTV legislative language intended for the Senate’s budget reconciliation bill. Entitled the Digital Transition and Public Safety Act of 2005, the legislation would set a “hard” deadline of April 7, 2009 for the digital conversion.

The legislation extends the FCC’s auction authority to September 30, 2009, and directs the FCC to commence auctions of the licenses for recovered analog spectrum on January 28, 2008. Auction proceeds would be deposited into a “Digital Transition and Public Safety Fund.” The Secretary of Commerce is directed to transfer \$5 billion from the Fund to the general fund of the Treasury on October 2, 2009. Remaining money in the Fund would be distributed by the Department of Commerce for a number of purposes, including \$3 billion for a program to assist consumers in the purchase of converter boxes, \$200 million for a program to assist the digital conversion of low-power and translator television stations, \$1.25 billion for a program to facilitate emergency communications, \$250 million for a program to implement the ENHANCE 911 Act of 2004, \$200 million for a program to provide assistance to coastal States and Indian tribes affected by hurricanes and other natural disasters, and \$15 million to be made available under certain conditions to the Department of Transportation’s essential air service program.

Because the legislation was designed specifically for the budget reconciliation process, no specifics are included on how the converter box subsidy program would be framed or administered. The legislation also does not contain language on the issues of cable carriage of multicasted digital signals and downconverted analog signals. It is anticipated that a separate DTV bill (not attached to the budget reconciliation) may be introduced in the future to address those and other issues not directly related to the budget reconciliation process.

On October 26, 2005, the Senate Budget Committee reported S. 1932, the Deficit Reduction Omnibus Reconciliation Act of 2005. Title III of S. 1932 is the Digital Transition and Public Safety Act of 2005 as approved by the Senate Commerce, Science and Transportation Committee.

During Senate consideration of S. 1932 on November 2, 2005, amendments were introduced by Senator Ensign to reduce funding for converter boxes from \$3 billion to \$1 billion, and by Senator McCain to move forward the transition deadline from April 7, 2009 to April 7, 2008. The Ensign amendment was withdrawn and the McCain amendment was defeated. The Senate passed S. 1932 on November 4, 2005.

Conference Report on S. 1932. The budget reconciliation conference report on S. 1932 (H.Rept. 109-362) was approved by the House on December 19,

2005, and approved by the Senate on December 21, 2005. However, because the Senate removed three provisions from the conference report (provisions not related to digital television), S. 1932 was returned to the House for final approval. On February 1, 2006, the House again approved S. 1932, thereby clearing the measure for the President's signature.

P.L. 109-171: Deficit Reduction Act of 2005. On February 8, 2006, the President signed S. 1932 into law (P.L. 109-171). Title III (the Digital Television Transition and Public Safety Act of 2005) sets the digital transition deadline at February 17, 2009, and allocates up to \$1.5 billion for a digital-to-analog converter box program. The act directs that after the digital transition deadline of February 17, 2009, full-power television stations will cease analog broadcasts and operate only on channels 2 through 51. Beginning on January 28, 2008, and ending on June 30, 2008, the FCC (with auction authority extended to 2011) will auction recovered analog spectrum between channels 52 and 69 (except for channels 63, 64, 68, and 69 which are already designated for public safety). Auction proceeds — most recently estimated at \$12.5 billion by the Congressional Budget Office⁴³ — will be deposited in a fund in the U.S. Treasury called the Digital Television Transition and Public Safety Fund.

On September 30, 2009, \$7.363 billion will be transferred from the Digital Television Transition and Public Safety Fund to the general fund of the Treasury. Of the funds remaining, \$990 million will be made available to the National Telecommunications and Information Administration (NTIA) to administer a digital-to-analog converter box program. The \$990 million includes up to \$100 million for administrative costs, including up to \$5 million for consumer education. Between January 1, 2008, and March 31, 2009, the program will supply up to two coupons per requesting household worth \$40 each towards the purchase of converter boxes (which are expected to cost \$50 to \$60 each). The program may receive additional funding bringing the total up to \$1.5 billion (including up to \$160 million for administrative costs) if NTIA notifies Congress that additional funding is needed.

Other designated uses of auction proceeds are as follows:

- not to exceed \$1 billion through FY2010 to establish a grant program to assist public safety agencies in the acquisition of, deployment of, or training for use of interoperable communications systems.
- not to exceed \$30 million for FY2007- FY2008 to reimburse New York City television broadcasters for costs incurred in the design and deployment of a temporary DTV broadcast system, which will provide DTV service until a permanent facility is constructed.

⁴³ Congressional Budget Office, Cost Estimate for H.R. 2863, DOD Appropriations Act, 2006, December 20, 2005, p. 3, available at [<http://www.cbo.gov/ftpdocs/69xx/doc6990/hr2863.pdf>]

- not to exceed \$10 million during FY2008-FY2009 to compensate low-power television stations (including Class A, translator, or booster television stations) for the cost of a digital-to-analog conversion device in order to convert the digital signals received from their corresponding full-power television stations and provide analog signals to their customers.
- not to exceed \$65 million during FY2009 to reimburse low-power television stations for equipment to upgrade stations from analog to digital in rural communities.
- not to exceed \$156 million during FY2007-FY2012 for a national alert and tsunami warning program.
- not to exceed \$43.5 million to implement the ENHANCE 911 Act of 2004.
- not to exceed \$30 million for the essential air service program administered by the Department of Transportation.

The act provides for additional supplemental license fees to be assessed by the FCC in the aggregate amount of \$10 million during FY2006. Additionally, the conferees instruct the FCC to issue a report and order on the digital television table of channel allotments, and to coordinate those allotments with Canada and Mexico to resolve any international interference issues.

Activities and Issues in the Second Session. The Conference Agreement for P.L. 109-171 did not retain the provisions in the House bill on “digital-to-analog conversion and must carry” (the “downconversion” issue, which addresses cable and satellite provision of broadcast signals to analog televisions), nor were the House provisions on a comprehensive consumer outreach program retained. Also, like the previous House and Senate versions, P.L. 109-171 does not contain language addressing the multicast must-carry issue or other DTV issues such as the broadcast flag or DTV public interest obligations.

On May 1, 2006, Senator Stevens introduced S. 2686, the “Communications, Consumer’s Choice, and Broadband Deployment Act of 2006.” Title VII of S. 2686 (“Digital Television”) contains a number of provisions related to the digital television transition. S. 2686 seeks to

- mandate consumer education requirements for manufacturers, retailers, broadcasters, and the FCC (Sec. 701a);
- establish a DTV Working Group on consumer education, outreach, and technical assistance (Sec. 701b);
- require all television sets with screens 13 inches or greater sold after March 1, 2007 to be capable of receiving digital signals (Sec. 701c);
- require large cable operators to provide to their customers their local broadcasters’ digital signals in both digital and “downconverted” analog formats through February 14, 2014 (Sec. 701d);

- affirm the authority of the FCC to implement a digital stream requirement for the blind (Sec. 702);
- require the FCC to submit a semi-annual report on international coordination with Canada and Mexico of the DTV table of allotments (Sec. 703); and
- give the FCC statutory authority to proceed with its broadcast flag rule, with certain limitations (Sec.452).

The following are ongoing policy and oversight issues related to the digital transition that could receive attention in the second session of the 109th Congress.

Digital Multicasts and Downconversion. Digital multicasting refers to the ability of broadcasters to divide their 6 MHz of digital spectrum into separate and discrete streams of content. Thus, for example, a broadcaster could transmit alternate channels of programming — such as weather, news, or foreign language, for example — in addition to its primary digital video broadcast. On February 10, 2005, the FCC affirmed its prior decision that cable operators are not required to carry more than a single digital programming stream from any particular broadcaster. At issue is whether “must carry” requirements should be expanded such that cable operators would be required to carry any or all additional multicasted channels transmitted by commercial broadcasters. Commercial broadcasters argue that their incentive to develop additional digital programming streams is diminished if they have no guarantee that cable systems will carry that programming. Cable providers counter that their decision whether or not to carry additional programming streams from a broadcaster should be dictated by the market, rather than mandated.

S. 2686 does **not** address the multicast must-carry issue, and to date, no multicast must-carry legislation has been introduced. However, FCC Chairman Kevin Martin has publicly stated his support for requiring multicast must-carry, and suggested the possibility of reconsidering the FCC’s 2005 decision (which was issued under the previous FCC Chairman, Michael Powell).⁴⁴ Two of the FCC Commissioners who voted against multicast must-carry, Michael Copps and Jonathan Adelstein, stated that they may be willing to reexamine the issue if public interest obligations of broadcasting multicast signals are also addressed.⁴⁵

A related issue is the extent to which cable providers may be permitted or required to carry downconverted analog signals after the digital transition takes place. Many cable households will likely continue to use analog televisions which cannot receive a digital signal. Cable companies might offer converter boxes to these customers. As an alternative, it is possible that cable providers might seek authority from Congress to “downconvert” the digital signal of selected local broadcast stations to analog format. To serve customers with digital televisions, cable providers would continue to provide digital signals as well (in other words, “dual carriage”). Under this scenario, a key issue is whether (and if so, how) Congress should mandate which

⁴⁴ “Martin Backs Broadcasters on Multicast Must-Carry at NAB,” *Communications Daily*, April 26, 2006.

⁴⁵ “Adelstein, Copps Say Multicast Must-Carry Can be Rethought,” *Communications Daily*, April 27, 2006.

local broadcast stations would receive the benefit of “dual carriage” to cable customers.

S. 2686 contains language that would require cable operators with capacities of greater than 550 megahertz to offer, through February 17, 2014, must-carry locally broadcast digital signals in formats viewable on both analog and digital televisions. Cable operators with capacities of 550 megahertz or less would be required only to offer those signals in analog format through February 17, 2014, while maintaining the option of offering digital signals as well. Cable operators would have the option of providing standard definition digital signals in lieu of high definition signals, and would be allowed to perform conversions at any location, from the cable head-end to the customer premises.

“Broadcast Flag” and the “Analog Hole”. Many content providers (e.g., movie studios and broadcast networks) may be reluctant to provide high quality digital content to households until they are assured that technologies are in place to prevent consumers from making unauthorized copies and Internet transmissions of copyrighted digital content. Two of these technologies currently under consideration are the “broadcast flag” and technology to “plug” what is commonly referred to as the “analog hole.” The “broadcast flag” applies only to content that is broadcast over-the-air. The “analog hole” problem applies to all digital content, whether it is transmitted over-the-air, by cable, or by satellite. For further explanations of these technologies, see the section, “Copyright Protection Technologies” in **Appendix 1** of this report.

On November 4, 2003, the FCC adopted a rule which gives broadcasters the option of inserting a “broadcast flag” into their over-the-air broadcast transmissions. By July 1, 2005, all consumer electronics devices capable of receiving an over-the-air DTV signal would have been required to be manufactured to incorporate content protection technologies that would limit the redistribution of digital television content when the broadcast flag is recognized. However, on May 6, 2005, the U.S. Circuit Court of Appeals for the District of Columbia struck down the FCC’s broadcast flag rules. The Court ruled that the FCC has no authority to regulate consumers’ use of televisions and other devices which receive broadcast transmissions. With the FCC’s broadcast flag rule negated by the Court, Congressional policymakers are considering whether to introduce legislation mandating a broadcast flag.

Discussion draft legislation released by the House Committee on the Judiciary, Subcommittee on Courts, the Internet and Intellectual Property, the Broadcast Flag Authorization Act, would give the FCC authority to proceed with the broadcast flag rule. On November 3, 2005, the Committee heard witnesses in support and opposition to the draft legislation. On January 24, 2006, broadcast flag draft legislation (which would also give the FCC authority to proceed with the broadcast flag rule) was discussed at a hearing held by the Senate Committee on Commerce, Science and Transportation.

S. 2686 would give the FCC statutory authority to proceed with its broadcast flag rule. However, certain types of broadcast transmissions would be permitted and not subject to broadcast flag restrictions. These include short excerpts of broadcast

digital television content over the Internet, content over a home network, content used for distance learning and education applications, and news and public affairs programming (not including sports) in which the primary commercial value depends on timeliness as determined by the broadcaster.

Meanwhile, on November 3, 2005, the House Committee on the Judiciary heard witnesses in support and opposition to draft legislation that would require consumer electronics devices (such as digital video recorders) to incorporate technology designed to prevent unauthorized copying and distribution of digital content obtained through the analog hole. The draft legislation was the basis for the Digital Transition Content Security Act of 2005 (H.R. 4569), introduced by House Judiciary Committee Chairman James Sensenbrenner and Ranking Member John Conyers on December 16, 2005.

NTIA Implementation of Digital Television Transition and Public Safety Fund. The Deficit Reduction Act of 2005 (P.L. 109-171) established the Digital Television Transition and Public Safety Fund (DTTPSF). While the DTTPSF will receive receipts from spectrum auctions held in 2008, P.L. 109-171 provides borrowing authority to the Department of Commerce (DOC) to commence specified programs prior to the availability of auction receipts. Amounts borrowed from the Treasury will be returned without interest upon the availability of auction revenue.

The Administration's FY2007 budget proposal for the National Telecommunications and Information Administration in DOC requests \$45 million in borrowing authority for three programs: \$15 million for the Digital-to-Analog Converter Box Program, \$15 million for Public Safety Interoperable Communications grants, and \$15 million for the New York City 9/11 Digital Transition. Other programs authorized by P.L. 109-171 (assistance to low-power television stations, national alert and tsunami warning, enhanced 911, and essential air service) will not commence or receive funding until auction receipts become available.

Appendix 1. Background on Selected Policy Issues

Digital “Must Carry”

Under the “must carry” provisions of the Cable Television Consumer Protection and Competition Act of 1992, cable TV providers are required to transmit local analog programs to their customers. This decision was based on the reasoning that since cable TV has a predominant position in the market, “without mandatory carriage provisions, the economic viability of local broadcast television and its ability to produce quality local programming would be jeopardized.”⁴⁶

The commercial broadcasters (primarily the smaller networks and independent stations, represented by the Association of Local Television Stations, but also the National Association of Broadcasters) believe that the same principles and conclusions of the 1992 Act should apply to DTV services, leading to mandatory carriage of the DTV programming by cable operators. Broadcasters argue that because most Americans receive their TV via cable, the carriage of DTV programming by cable providers is essential for consumers to purchase DTV receivers.

The cable companies (led by the National Cable Television Association, NCTA) oppose any “must carry” requirements for cable operator carriage of DTV programming, arguing that it would be an unlawful taking of their property, and that they should be able to decide what content they provide on their own networks. NCTA points out that, unlike the commercial broadcasters who were given free spectrum licenses for DTV, cable operators must build their own infrastructure to be able to transmit DTV signals. Cable operators say they will carry commercial broadcasters’ DTV programming as soon as consumer demand warrants it. Cable television services provide a finite number of channels to consumers, and any mandate to provide DTV programming would require cable companies to remove other non-broadcast channels. Many cable operators are investing in the upgrades needed to provide DTV, although the video transmission standards adopted by cable operators may not be the same as those used by the broadcasters. This could mean that different home equipment may be necessary for cable services than for over-the-air TV reception. In addition, HDTV programming will require cable operators to build a more robust transmission (i.e., greater bandwidth) capability than is required by SDTV, and some cable operators may want to offer SDTV but not HDTV services. The cable industry also contends that mandating carriage of all DTV broadcast transmissions will financially devastate many smaller cable operators.

Responding to the debate between the broadcast and cable industries over whether cable TV providers should be required to transmit DTV programming, in

⁴⁶ Ibid., p. 5. Satellite television is also subject to must carry requirements. See CRS Report RS20425, *Satellite Television: Historical Information on SHVIA and LOCAL*, by Marcia S. Smith.

July 1998 the FCC initiated a proceeding on the matter.⁴⁷ On January 22, 2001, the FCC announced its adoption of rules for cable carriage of digital TV signals. Most notably, the FCC ruling did **not** require cable systems to simultaneously carry both the analog and digital signals (“dual carriage”) of local TV stations. The FCC tentatively concluded that “such a requirement appears to burden cable operators’ First Amendment interests more than is necessary to further a substantial governmental interest.”⁴⁸ While not approving a dual carriage mandate, the FCC did rule that a digital-only TV station, whether commercial or non-commercial, can immediately assert its right to carriage on a local cable system. Additionally, a TV station that returns its analog spectrum and converts to digital operations must be carried by local cable systems. Cable systems must carry “primary video,” defined as a “single programming stream and other program-related content.”

The FCC continued to examine the must-carry issue through 2004. Of particular interest was how must-carry rules would ultimately apply to “digital multicasting,” which refers to the ability of broadcasters to divide their 6 MHz of digital spectrum into separate and discrete streams of content. At issue is whether cable operators should be required to carry any or all additional multicasted channels transmitted by commercial broadcasters as part of their 6 MHz digital allotment.

On January 31, 2005, the National Cable Television Association (NCTA) and the Association of Public Television Stations (APTS) announced an agreement under which cable companies would provide dual-carriage (both analog and digital) of at least one public television station in a market during the transition, as well as carrying up to four multicasts of public stations after the transition. Under the agreement, APTS will no longer lobby the FCC or Congress for government must-carry mandates.

On February 10, 2005, the FCC affirmed its prior decision that cable operators are not required to carry more than a single digital programming stream from any particular broadcaster. The FCC also affirmed the previous tentative conclusion not to impose a dual carriage requirement on cable operators.

Mandating Digital Tuners

Currently, about 2% of American households have purchased DTVs equipped or accompanied with digital tuners that can receive over-the-air digital broadcast signals. Some groups (for example, broadcasters) advocate a government mandate that would require new televisions to contain built-in digital tuners.

A study conducted by Arthur D. Little (and commissioned by the National Association of Broadcasters and the Association of Maximum Service Television) estimates that DTV set penetration would reach 75.5% by 2006, if the FCC were to mandate that all new sets sold after January 1, 2004 have DTV reception capability. Supporters of a mandate argue that requiring digital tuners would ensure a quicker

⁴⁷ *FCC Notice of Proposed Rule Making on Carriage of Transmissions of Digital Television Broadcast Stations*, CS Docket No. 98-120, released July 10, 1998.

⁴⁸ See [http://www.fcc.gov/Bureaus/Cable/News_Releases/2001/nrcb0103.html].

penetration of DTVs into American households, thereby giving digital content providers and distributors greater incentive to produce and transmit digital content.

Consumer electronics manufacturers and many consumer advocates oppose a digital tuner mandate, arguing that it would raise prices of television sets beyond the means of many consumers.⁴⁹ Opponents also dispute whether a digital tuner mandate would effectively hasten the DTV transition, since most households currently receive their primary television service via cable or satellite and therefore may not require an over-the-air digital reception capability. Finally, they argue that a digital tuner mandate would constitute an inappropriate, unnecessary, and counterproductive government intervention into an increasingly dynamic digital television marketplace.

On August 8, 2002, the FCC adopted a phase-in plan requiring most new television sets to contain digital tuners by 2007. Specifically, the FCC's Second Report and Order and Second Memorandum Opinion and Order (FCC 02-230) requires all television sets with screen sizes of at least 13 inches, and all television receiving equipment (such as video cassette recorders and DVD players/recorders to include DTV reception capability according to the following schedule:

Receivers with screen sizes 36 inches and above — 50% of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005.

Receivers with screen sizes 25 to 35 inches — 50% of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006.

Receivers with screen sizes 13 to 24 inches — 100% of all such units must include DTV tuners effective July 1, 2007.

TV Interface Devices VCRs and DVD players/recorders, etc. that receive broadcast television signals — 100% of all such units must include DTV tuners effective July 1, 2007.

The FCC's phase-in plan was opposed by the Consumer Electronics Association (CEA), consumer groups, and antitax groups. The CEA, citing the "scant percentage of households relying on over-the-air television reception" argued that the mandate is a "multi-billion dollar TV tax on American consumers," and called instead for an FCC mandate on cable-DTV compatibility standards.⁵⁰ This position was countered by the National Association of Broadcasters, who argued that the mandate is necessary to hasten the DTV transition and ensure the survival of free over-the-air broadcasting, which NAB says is currently received by roughly one third of all TV sets in use.⁵¹

⁴⁹ Estimated at an initial cost of \$200 per set (see April 6, 2001 Comments of the CEA to the FCC, MM Docket No. 00-39). This figure is disputed by commercial broadcasters (see May 7, 2001 Comments of NAB/MSTV/ALTV to the FCC, MM Docket No. 00-39).

⁵⁰ Consumer Electronics Association, *Americans Should Not Be Forced to Buy DTV Over-the-Air Tuners Says CEA*, Press release, August 8, 2002, available at [http://www.ce.org/Press/CurrentNews/press_release_detail.asp?id=10012].

⁵¹ National Association of Broadcasters, *Fact Vs. Myth: The DTV Tuner Integration Debate*, available at [http://www.dtvprofessional.com/2002/08_aug/editorials/nab_dvttuners.htm].

Subsequently, the agreement between the consumer electronics and cable industries on a cable-DTV interoperability standard has dampened CEA's opposition to the digital tuner mandate, because the circuitry enabling "plug and play" compatibility between digital televisions and cable systems could be modified to receive digital over-the-air signals at an incremental cost.⁵² However, in November 2004, the CEA, along with the Consumer Electronics Retailers Coalition (CERC), petitioned the FCC to eliminate the deadline of July 1, 2005 for digital tuners in 50% of televisions in the 25 to 36 inch (mid-sized) screen size range. Alternatively, CEA and CERC proposed that the digital tuner deadline for all (100%) of televisions in that size range be moved up from July 1 to March 1, 2006. On February 14, 2005, the FCC announced a Notice of Proposed Rulemaking to consider whether to adjust the schedule by which televisions with screen sizes of 25 to 36 inches are required to contain digital tuners.

On June 9, 2005, the FCC denied the CEA and CERC petition to eliminate the deadline of July 1, 2005 for 50% of televisions in the 25 to 36 inch screen size range to have digital tuners. At the same time, the FCC did agree to move up the digital tuner deadline for mid-size televisions from July 1 to March 1, 2006. The FCC also proposed to move up the date by which all televisions with screen sizes over 13 inches must have digital tuners, from July 1, 2007 to December 31, 2006; and asked for comments on whether digital tuner requirements should be extended to televisions with screen sizes smaller than 13 inches.

On November 3, 2005, the FCC announced its decision to require **all** sets (including sets with screen sizes smaller than 13 inches) to contain digital tuners by March 1, 2007.⁵³

S. 2686, the Communications, Consumer's Choice, and Broadband Deployment Act of 2006, would require all television sets with screens 13 inches or greater sold after March 1, 2007, to be capable of receiving digital signals. Except for that mandated change, S. 2686 would not allow the FCC to revise its implementation schedule for digital tuners.

Copyright Protection Technology

Many content providers (e.g., movie studios and broadcast networks) are reluctant to provide high quality digital content to DTV owners until they are assured that interoperability standards and technology licensing agreements are in place to prevent consumers from making unauthorized copies and Internet transmissions of digital content. In 1998, five consumer electronics manufacturing companies — Hitachi, Intel, Matsushita, Sony, and Toshiba — formed an entity called the Digital Transmission Licensing Administrator (DTLA, also known as "5C") to license a jointly developed Digital Transmission Content Protection (DTCP) technology.

⁵² Clark, Drew, "Electronics Group Shows Flexibility on Digital TV Issue," *National Journal's Technology Daily*, January 27, 2003.

⁵³ FCC News Release, "FCC Modifies Digital Tuner Requirements to Advance Digital Transition," November 3, 2005, available at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262013A1.pdf].

DTCP is designed to protect audiovisual and audio content against unauthorized interception or retransmission in the digital home environment.

On July 17, 2001, two major studios — Warner Bros. and Sony Pictures Entertainment — announced a licensing agreement to adopt DTCP. The agreement is designed to permit the studios to protect prerecorded media, pay-per-view, and video-on-demand transmissions against unauthorized copying, and to protect all content against unauthorized Internet retransmission, while assuring consumers' ability to continue customary home recording of broadcast and subscription programming.⁵⁴

Broadcast Flag.⁵⁵ While DTCP protects content delivered to the home via cable or satellite, the technology does not protect over-the-air broadcast content. Other major studios have been reluctant to sign licensing agreements with DTLA until broadcast content can also be protected. Additionally, broadcast networks (ABC, CBS, and Fox) have opposed the 5C standard, arguing that the technology's inability to encrypt over-the-air broadcasts will cause high quality content to migrate toward cable and satellite exclusively. A week after the 5C agreement with Sony Pictures and Warner Bros. was announced, the five other major studios (Disney, Paramount, Fox, Universal, and MGM) submitted a proposal to DTLA which would require digital broadcast content to be encrypted with a "broadcast flag" preventing Internet distribution or retransmission of digital content broadcast over-the-air. On June 3, 2002, a group of engineers from the motion picture and technology industries⁵⁶ released a detailed "broadcast flag" proposal. While the proposal is strongly supported by the content industry, the technology industry remains divided, with some companies supporting and others opposing this particular proposal. Some consumer groups have also expressed opposition.

Those supporting a broadcast flag (such as the Motion Picture Association of America and other content providers) argue that the protections against piracy offered by a broadcast flag are crucial to ensure that content providers make high-value programming available over the digital airwaves. Supporters also argue that a broadcast flag will not prevent consumers from making physical copies of DTV programs, or from distributing such copies within a person's home digital network. Opponents of a broadcast flag (many consumer electronics and high tech companies, as well as consumer groups) assert that because electronic devices will have to be meet certain specifications in order to process the broadcast flag, the innovation and functionality of consumer electronics equipment will be adversely affected. Additionally, they argue, because the broadcast flag would effectively ban any retransmission not approved by content providers, legitimate consumer rights (e.g. "Fair Use") would be compromised.

⁵⁴ DTLA Press Release, "DTLA, Sony Pictures Entertainment and Warner Bros. Announce First Studio Licenses for Digital Home Network Technology," July 17, 2001, see [http://www.dtcp.com/data/press/DTCP_PRESS_010717.pdf].

⁵⁵ For more information on the broadcast flag, see CRS Report RS22106, *Copyright Protection of Digital Television: The 'Broadcast Flag'*, by Angie A. Welborn.

⁵⁶ The Broadcast Protection Discussion Group (BPDG), a subgroup of the Copy Protection Technical Working Group (CPTWG).

On August 9, 2002, the FCC issued a notice of proposed rulemaking (FCC 02-231, MB Docket 02-230) in the matter of digital broadcast copy protection. Noting that the lack of digital broadcast copy protection is a significant impediment to the DTV transition, the FCC solicited public comment on whether the FCC can and should mandate the use of a copy protection mechanism for digital broadcast television. The comment period closed on February 18, 2003; over 6000 comments were received, most from individual citizens.

On November 4, 2003, the FCC adopted a rule which gives broadcasters the option of inserting a “broadcast flag” into their over-the-air broadcast transmissions. By July 1, 2005, all consumer electronics devices capable of receiving an over-the-air DTV signal would have been required to be manufactured to incorporate content protection technologies that will limit the redistribution of digital television content when the broadcast flag is recognized. Before DTV devices can be manufactured, however, content protection technologies must be approved. The FCC set forth an “interim procedure” whereby parties would certify that their content protection technology meets FCC criteria. After a period of public comment, the FCC would determine whether or not to approve that particular technology. The FCC issued a *Further Notice of Proposed Rulemaking* in order to formulate a permanent approval procedure for content protection technology.⁵⁷ On August 4, 2004, the FCC adopted a Report and Order approving thirteen digital output protection technologies and recording methods.⁵⁸

On February 22, 2005, the U.S. Circuit Court of Appeals for the District of Columbia heard an appeal filed in March 2004 by library and consumer groups objecting to the FCC rule mandating that copy protection technology be included in digital televisions and related electronics by July 1, 2005. On May 6, 2005, the Court struck down the FCC’s broadcast flag rules. The Court ruled that the FCC has no authority to regulate consumers’ use of televisions and other devices which receive broadcast transmissions. With the FCC’s broadcast flag rule negated by the Court, Congressional policymakers are considering whether to introduce legislation mandating a broadcast flag.

Discussion draft legislation released by the House Committee on the Judiciary, Subcommittee on Courts, the Internet and Intellectual Property, the Broadcast Flag Authorization Act, would give the FCC authority to proceed with the broadcast flag rule. On November 3, 2005, the Committee heard witnesses in support and opposition to the draft legislation.⁵⁹ On January 24, 2006, broadcast flag draft legislation (which would also give the FCC authority to proceed with the broadcast

⁵⁷ *FCC Report and Order and Further Notice of Proposed Rulemaking in the Matter of Digital Broadcast Content Protection*, MB Docket No. 02-230, FCC 03-273, released November 4, 2003.

⁵⁸ *FCC Order in the Matter of Digital Output Protection Technology and Recording Method Certifications*, FCC 04-193, released August 12, 2004.

⁵⁹ House Judiciary Committee, Subcommittee on Courts, the Internet and Intellectual Property, Oversight Hearing, “Content Protection in the Digital Age: The Broadcast Flag, High-Definition Radio, and the Analog Hole.”

flag rule) was discussed at a hearing held by the Senate Committee on Commerce, Science and Transportation.

S. 2686, the Communications, Consumer's Choice, and Broadband Deployment Act of 2006 introduced by Senator Stevens on May 1, 2006, would give the FCC statutory authority to proceed with its broadcast flag rule. However, certain types of broadcast transmissions would be permitted and not subject to broadcast flag restrictions. These include short excerpts of broadcast digital television content over the Internet, content over a home network, content used for distance learning and education applications, and news and public affairs programming (not including sports) in which the primary commercial value depends on timeliness as determined by the broadcaster.

Analog Hole. Another copyright protection issue of concern to content providers is what is commonly referred to as the "analog hole." In the foreseeable future, many consumers will continue to use analog televisions. In order to display the content carried by digital signals, analog televisions will be equipped with a digital tuner (a set-top box) which converts the signal from digital to analog. At this point, the digital signal, even if content protected, is converted into an unprotected analog form which could then be easily converted into a similarly unprotected digital form subject to the unauthorized copying and Internet transmission the content providers are seeking to prevent.

Discussion draft legislation released by the House Committee on the Judiciary, Subcommittee on Courts, the Internet and Intellectual Property, the Analog Content Protection Act, would require devices (such as digital video recorders or PC-based tuners) to recognize an analog rights signaling mechanism called "CGMS-A plus Veil" (Analog Copy Generation Management System coupled with the Veil Technologies Rights Assertion Mark). On November 3, 2005, the Committee heard witnesses in support and opposition to the draft legislation.⁶⁰ The draft legislation was the basis for the Digital Transition Content Security Act of 2005 (H.R. 4569), introduced by House Judiciary Committee Chairman James Sensenbrenner and Ranking Member John Conyers on December 16, 2005.

Cable/DTV Interoperability Standards

Interoperability standards between digital televisions and cable systems are necessary in order for consumers to be able to watch digital programming over their cable systems. Currently, interoperability is achieved via the proprietary set-top box leased to the subscriber by the local cable company. Given the absence of a national interoperability standard, consumers are, at present, unable to purchase DTV products from consumer electronics stores which can be directly connected to cable systems without the use of a set-top box. Two separate entities — the consumer electronics industry (including manufacturers and retailers) and the cable system operators — have embarked on an often contentious process of determining the specific technical details of how DTV devices might achieve nation-wide compatibility and interoperability with cable systems.

⁶⁰ See [<http://judiciary.house.gov/Oversight.aspx?ID=202>]

Section 304 of the Telecommunications Act of 1996 directed the FCC to adopt regulations to assure the commercial consumer availability of “navigation devices” (i.e. set-top boxes, remote control units) without jeopardizing the rights of a cable provider to protect its signal from theft. Currently, proprietary set-top boxes are “integrated” with two overall functions: security and navigation (i.e. allowing the subscriber to flip from channel to channel). A 1998 order adopted by the FCC (FCC 98-116) requires the cable operators to separate the security functions from non-security functions and to make available (by July 1, 2000) modular security components to the consumer electronics industry.⁶¹ Allowing time for transition, the FCC would prohibit the sale or lease of new “integrated” boxes as of July 1, 2006.

On February 22, 2000, the Consumer Electronics Association (CEA) and the National Cable Television Association (NCTA) announced a voluntary agreement on a set of technical requirements that permit the direct connection of digital television receivers to cable television systems. In January 2002, CableLabs (a research organization of the cable industry) published specifications for the OpenCable Applications Platform (OCAP), which would serve as a uniform interoperability cable/DTV standard. However, consumer electronics manufacturers and retailers and the cable industry sharply disagree over the pace and specific technical details (including copy protection requirements) of how interoperability should be implemented.

Disagreement over DTV/cable interoperability continues was prominently aired during the September 25, 2002 House Energy & Commerce Committee hearings on the digital transition. NCTA argued that proprietary set-top boxes already allow a seamless DTV/cable interoperability, that there are, therefore, no compatibility problems between DTVs and cable systems, and that consumers’ inability to purchase cable-ready DTVs or set-top boxes from consumer electronics stores is not a critical component of the digital transition. However, regardless of digital transition issues, the cable industry said it supports the retail availability of cable-ready DTV products because it is in its own business interest to do so.⁶² NCTA added that it has developed the required interoperability standards, and is further advocating a “DVI connector” on all integrated DTV sets, which would allow consumers to upgrade and receive advanced interactive services from their cable or satellite provider.⁶³

⁶¹ Also referred to as a Point of Deployment or “POD” module, this would consist of a smart card that could be inserted into the consumer electronics device to provide the security required by the cable operator. A “national security interface” is required to ensure that POD modules from all the different local cable operators would satisfactorily operate in every device. To manufacture a “POD reliant” device, the manufacturer must sign a POD-Host Interface License Agreement (“PHILA”).

⁶² Subscribers of satellite TV (“DBS,” the primary competitor to cable) can use the same equipment anywhere in the country. This “portability” gives DBS a marketing advantage over cable.

⁶³ Testimony of Michael Wilner, Vice Chairman and CEO, Insight Communications, and Chairman, NCTA, before the House Subcommittee on Telecommunications and the Internet, September 25, 2002.

An opposing view was expressed at the hearings by consumer electronics manufacturers and retailers. A spokesperson for the Consumer Electronics Retailers Coalition (CERC) argued that interoperability standards will be ineffective unless and until the cable industry's own proprietary equipment relies on and supports those same standards. Without that reliance and support, they argued, interoperable DTV devices manufactured by the consumer electronics industry cannot be competitive (in terms of cost or functionality) with the cable industry's proprietary equipment.⁶⁴ Additionally, testimony from a consumer electronics manufacturer stated opposition to a mandated and ungradable connector on all DTVs, arguing that this equipment is likely not needed on small and mid-size televisions, and that making such connectors compatible with future digital technologies is a "daunting, if not impossible, task."⁶⁵

On December 19, 2002, the cable and consumer electronics industries announced they had reached an agreement on a cable compatibility standard for an integrated, unidirectional digital cable television receiver. The two industry groups filed a Memorandum of Understanding (MOU) with the FCC, outlining the agreement. According to the MOU, the industries will continue to negotiate a "bidirectional" standard that would enable consumers to receive advanced services (such as video on demand) without the need for an external navigation device. On January 7, 2003, the FCC issued a Further Notice of Proposed Rulemaking (FCC 03-3) which seeks comment on the MOU and proposed FCC rules which would be necessary to implement the industry agreement. Opposition to the agreement's "encoding rules" has been expressed by several organizations, including the Motion Picture Association of America, makers of personal video recording technology (TiVo), and consumer groups.

On September 10, 2003, the FCC adopted a Second Report and Order which adopts, with certain modifications, the MOU agreement between the cable and consumer electronics industries. The new rules allow for the manufacture of "plug and play" television sets that will receive one-way digital signals (from the cable company to the consumer) without the need for a set-top box. However, consumers will have to obtain from their cable operator a security card (a "POD" or "CableCARD") that must be inserted into the TV set. A set-top box will still be required for two-way services such as video on demand or pay-per-view. The cable and consumer electronics industry are continuing to negotiate over this issue. Finally, the Order initiated a subsequent proposed rulemaking (Second Further Notice of Proposed Rulemaking) which will examine some remaining issues.⁶⁶

⁶⁴ Testimony of Alan McCullough, Chairman, President & CEO, Circuit City Stores, Inc., representing CERC, before the House Subcommittee on Telecommunications and the Internet, September 25, 2002.

⁶⁵ Testimony of Richard M. Lewis, Chief Technology Officer, Zenith Electronics Corporation, before the House Subcommittee on Telecommunications and the Internet, September 25, 2002.

⁶⁶ FCC Press Release, *FCC Eases Digital Transition for Consumers*, September 10, 2003, available at [http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-238850A1.pdf].

Currently, the cable industry and the consumer electronics industry are in dispute over the deadline set by the FCC (FCC 98-116) which would prohibit the sale or lease by cable providers of set-top boxes with integrated security as of July 1, 2006. Under the current FCC rule, after July 1, 2006, the security of the digital signal will be protected by a CableCARD (supplied by the cable provider) which can be inserted into the “plug and play” television set, and allow consumers to view scrambled programming. Cable companies are arguing to the FCC that the July 1, 2006 deadline should be extended eighteen months, if not eliminated altogether. Cable providers argue that imposing the ban would divert industry resources from developing low-cost digital set-top boxes and next-generation network architect security for cable services. The consumer electronics industry, on the other hand, argues that if the July 1, 2006 deadline is extended or eliminated, the value of CableCARD technology to consumers will be diminished, thereby making it more likely that consumers will not purchase “plug and play” digital sets with integrated tuners, and continue to opt for sets which rely on the set-top boxes supplied by cable providers.

Digital Conversion of Public Broadcasting Stations

The FCC set a deadline of May 1, 2003 for public television stations to convert to digital. Public television consists of 176 licensees operating 357 stations nationwide. According to the Public Broadcasting Service (PBS), as of March 2005, 307 PBS member stations offered digital broadcast services, covering 94% of U.S. television households. Unlike commercial broadcasters, public television broadcasters were not opposed to an early deadline for returning analog spectrum, provided that a mechanism is put in place which would ensure that converter boxes are made available to exclusively over-the-air households. Public television stations advocate the creation of a trust fund to support the production and distribution of digital educational content.⁶⁷ The Digital Opportunity Investment Trust Act (H.R. 2512/S. 1023), introduced in the House and Senate in May 2005, would establish a Digital Opportunity Investment Trust fund, part of which would provide Public Television Digital Educational grants to noncommercial educational television stations.

Public broadcasting stations view digital television as an opportunity to enhance and expand services to their local communities. For example, public television stations are using multicast channels to provide programming streams dedicated to formal and children’s education, workforce development, public affairs and local issues, and addressing underserved communities. Stations are also conducting pilot programs, whereby datacasts are used to establish Homeland Security public safety networks, including public alert systems and closed networks used by public safety and emergency management agencies.

Raising money for the digital conversion is a challenge for many public television stations, especially those in small markets. According to the Association of Public Television Stations (APTS), the total nationwide cost of conversion is \$1.7

⁶⁷ See Comments of the Association of Public Television Stations before the Federal Communications Commission, MB Docket No. 04-210, August 11, 2004.

billion. State governments have provided most of the funding to date, about \$476 million, with private sources providing \$260 million. The federal government has provided \$221 million.⁶⁸ Public broadcasters have been seeking a substantial federal contribution (\$699 million over five years) for digital conversion. This funding would be used to pay for the new equipment and physical infrastructure required for digital conversion (e.g. transmitters, translators, and production equipment). Public stations are seeking this funding from the Public Telecommunications Facilities Program (PTFP), a grant program administered by the National Telecommunications and Information Administration (NTIA) at the Department of Commerce.

The PTFP, which has provided matching grants for public broadcasting equipment for over 35 years, began to fund digital conversion, awarding \$15.7 million for 44 digital television conversion projects in FY1999, \$18 million for 31 projects in FY2000, \$35 million for 52 projects in FY2001, and \$36 million for 52 projects in FY2002, \$25 million for 56 projects in FY2003, \$9.8 million for 31 projects in FY2004, and \$11.7 million for 33 projects in FY2005.

For FY2004, the Administration proposed to suspend all grants under the PTFP. As an alternative, the Administration proposed making \$80 million available for the digital transition from the Corporation for Public Broadcasting's already enacted FY2004 funding. The FY2004 CJS bill (H.R. 2799, H.Rept. 108-221), as passed by the House on July 23, 2003, also provided no funding for PTFP grants. The Senate version of the FY2004 CJS bill (S. 1585, S.Rept. 108-144), as reported, would provide \$55 million for PTFP. The FY2004 Consolidated Appropriations Act (P.L. 108-199) provided \$22 million for PTFP in FY2004.

For FY2005, the Administration again proposed terminating the PTFP. As an alternative, the Administration proposed funding of \$20 million for digital transition grants for public television stations from within the Corporation for Public Broadcasting's already enacted FY2005 funding of \$390 million. The House FY2005 CJS bill (H.R. 4754), as passed, would also terminate the PTFP. The Senate FY2005 CJS bill (S. 2809) would provide \$21.77 million for PTFP. The FY2005 Consolidated Appropriations Act (H.R. 4818/P.L. 108-447) provides \$21.77 million for PTFP.

For FY2006, the Administration again proposed the termination of the PTFP. The FY2006 CJS bill (H.R. 2862; H.Rept. 109-118), approved by the House Appropriations Committee on June 7, 2005, would terminate the PTFP. On June 21, 2005, the Senate Appropriations CJS Subcommittee approved \$22 million for PTFP (S.Rept. 109-88). The Senate passed H.R. 2862 on September 15, 2005. The conference agreement (H.Rept. 109-272) provides \$22 million. H.R. 2862 was signed by the President on November 22, 2005.

For FY2007, the Administration again proposes termination of the PTFP.

Whereas PTFP grants go for equipment, federal funds from the Corporation for Public Broadcasting (CPB) are supporting the development and distribution of digital

⁶⁸ *Communications Daily*, May 1, 2003, p. 10.

content. For FY2001, the Labor-HHS-Education Appropriation Act (P.L. 106-554) appropriated \$20 million to CPB for investment in DTV programming and distribution, but required congressional authorization before it could be released. The FY2001 Supplemental Appropriations Act (H.R. 2216, P.L. 107-20, signed July 24, 2001) contained language authorizing release of those funds to CPB. For FY2002, the Administration requested an additional \$20 million for CPB for the purposes of digital conversion. Both House and Senate versions of the FY2002 Labor-HHS-Education appropriation bills (H.R. 3061, H.Rept. 107-229/S. 1536, S.Rept. 107-84) sought to provide \$25 million to CPB for digital conversion. The House bill would provide the funding pending authorization legislation. The Labor-HHS conference report (H.Rept. 107-342) provided \$25 million for equipment and facilities to enable public broadcasters to meet the statutory deadline for digital conversion as proposed by the Senate. The conference agreement did not provide these funds contingent upon authorization as proposed by the House. The bill was signed into law (P.L. 107-116) on January 10, 2002.

For FY2003, the 108th Congress, the FY2003 Omnibus Appropriations (P.L. 108-7) provided \$48.7 million to CPB for digital conversion. The Administration's FY2004 budget proposal requested that \$80 million of CPB's already enacted FY2004 appropriation be allocated to digital conversion. The House version of the FY2004 Labor-HHS-Education appropriations bill (H.R. 2660, H.Rept. 108-188), as passed by the House on July 10, 2003, matched the Administration proposal. The Senate Labor-HHS-Education appropriations bill (S. 1356, S.Rept. 108-81) provided an additional \$55 million in "new money" for digital conversion in FY2004. Ultimately, the FY2004 Consolidated Appropriations Act (P.L. 108-199) provided \$50 million in "new money" to CPB specifically for digital conversion.

The FY2005 House Labor-HHS-Education appropriations bill (H.R. 5006, passed by the House on September 9, 2004) designates up to \$20 million for digital conversion from CPB's already enacted FY2005 appropriation. The Senate version of the FY2005 Labor-HHS-Education appropriations bill (S. 2810, reported by the Senate Appropriations Committee, September 14, 2004) would provide \$49.7 million in "new money" for digital conversion. The FY2005 Consolidated Appropriations Act (H.R. 4818/P.L. 108-447) provides \$39.7 million in "new money" for digital conversion.

The Administration's FY2006 budget proposal recommended that \$30 million of CPB's FY2006 budget (previously appropriated as an advanced appropriation during the FY2004 budget cycle) be allocated to digital conversion. On June 16, 2005, the House Appropriations Committee approved a bill (H.R. 3010; H.Rept. 109-143) that would rescind \$100 million from CPB's already enacted total FY2006 appropriation (from \$400 million to \$300 million). H.R. 3010 makes up to \$30 million available for digital conversion from CPB's FY2006 appropriation. H.R. 3010 contains no "new money" for digital conversion. On July 14, 2005, the Senate Appropriations Committee approved \$35 million in "new money" in the FY2006 CPB budget for digital conversion (S.Rept. 109-103). The Senate passed H.R. 3010 on October 27, 2005. The conference agreement (H.Rept. 109-300) provides \$30 million for digital conversion.

The Administration's FY2007 budget proposal requests an amount not to exceed \$38 million for grants associated with the public television digital transition. As in previous Administration budget proposals, the \$38 million would be taken from the FY2007 advance appropriation previously enacted during the FY2005 budget cycle.

Additionally, the FY2004 Senate Agriculture Appropriations bill (S. 1427; S.Rept. 108-107) provided \$15 million in public broadcasting system grants (from the Distance Learning and Telemedicine account of the Rural Utilities Service) to allow noncommercial stations that serve rural areas to convert from analog to digital operations. Within the agriculture appropriations section of P.L. 108-199, the Distance Learning and Telemedicine account of the Rural Utilities Service includes \$14 million in FY2004 to assist digital conversion of rural public television stations.

The FY2005 House Agriculture Appropriations bill (H.R. 4766), as passed, includes no funding for digital television conversion. The FY2005 Senate Agriculture Appropriations bill (S. 2803; S.Rept. 108-340), approved by the Senate Appropriations Committee on September 14, 2004, would provide \$13 million for digital conversion. The FY2005 Consolidated Appropriations Act (H.R. 4818/P.L. 108-447) provides \$10 million for public television digital conversion.

For FY2006, the Administration requested no funding for digital conversion under the Distance Learning and Telemedicine account of the Rural Utilities Service. The FY2006 House Agriculture Appropriations bill (H.R. 2744), passed on June 8, 2005, includes no funding for digital conversion. The FY2006 Senate Agriculture Appropriations bill, approved by the Senate Appropriations Committee on June 23, 2005 (S.Rept. 109-92) and passed by the Senate on September 22, 2005 provides \$10 million for digital conversion. The Conference Report (H.Rept. 109-255) provides \$5 million for digital conversion. The FY2006 Agriculture Appropriations bill (P.L. 109-97) was signed into law November 10, 2005.

For FY2007, the Administration requests no funding for digital conversion under the Distance Learning and Telemedicine account of the Rural Utilities Service.

Satellite Television and “Digital White Areas”

Under current law, satellite television providers are permitted to provide distant network signals (from “out of market” network affiliates) only to subscribers living in “white areas” — meaning they receive inadequate analog television broadcast signals from their local broadcasters. Legislation was introduced into the 108th Congress (H.R. 4501/H.R. 4518/S. 2644) which would explore the possibility of creating “digital white areas” such that some subscribers may be eligible for distant network digital signals via their satellite dish if they cannot receive local digital TV signals. In November 2004, Congress passed the Satellite Home Viewer Extension and Reauthorization Act (SHVERA) as part of the FY2005 Consolidated Appropriations Act (H.R. 4818/P.L. 108-447). SHVERA provides limited authority for satellite companies to offer “distant digital signals” if certain conditions are met. For more information on this issue, see CRS Report RS21990, *Satellite Television and “Digital White Areas”: Provisions of the 2004 Satellite Home Viewer Extension and Reauthorization Act*.

Low Power TV

Low Power Television (LPTV) was created by the FCC in 1982 to serve rural areas and individual communities within larger urban areas. LPTV stations may not exceed 3 kilowatts for VHF channels or 150 kilowatts for UHF channels, and must not cause interference in the reception of full service television stations. Currently, there are 2119 LPTV stations in the United States. Concerns have arisen that many LPTV stations will lose their licenses in the transition to DTV. While the FCC's February 1998 modification to its table of allotments for DTV licensees did provide for some LPTV licensees to be relocated to new frequencies, many would still lose their licenses under FCC digital transition plans.

To provide some relief for LPTV licensees, the Community Broadcasters Protection Act of 1999 was enacted as part of the Intellectual Property and Communications Omnibus Reform Act of 1999 (P.L. 106-113). This law established a "class A" status to qualifying LPTV licensees, giving them a measure of protection from full-power TV stations in the transition to DTV. The act directs that class A licensees be accorded primary status as television broadcasters, prescribes the criteria LPTV stations must meet to be eligible for class A status, and outlines the interference protection class A stations must provide to other television stations. To implement the act, in April 2000, the FCC established rules for class A LPTV licensees, to facilitate the acquisition of capital for LPTV stations to continue to provide free, over-the-air programming to their communities.⁶⁹

In accordance with the 1992 Cable Act (47 USC 534), cable television providers are required to transmit to their audiences the locally-generated programming of all full-power TV broadcasters that request carriage, a provision known as "must-carry." Under the 1992 act, some LPTV stations are entitled to "must-carry" status if they meet certain criteria.⁷⁰ The FCC's April 2000 ruling did not address the question of whether class A licensees should be entitled to the "must-carry" provision, as are full-power broadcast TV stations. A petition filed with the FCC argued that class A licenses should be granted the same "must-carry" status as full-power broadcasters. The FCC subsequently ruled that class A stations do not have the same must carry rights as full service television stations.⁷¹

⁶⁹ *FCC Report and Order in the Matter of Establishment of Class A Television Service*, MM Docket No. 00-10, FCC 00-115, released April 4, 2000.

⁷⁰ Those criteria (47 USC 534) include (among other requirements) that the community of license of the LPTV station has a population not exceeding 35,000, that there is no full-power TV station licensed to any community within the county or other political subdivision (of a state) served by the cable system, and that the LPTV station provides the only news coverage in its community of license.

⁷¹ *FCC Memorandum Opinion and Order on Reconsideration in the Matter of Establishment of Class A Television Service*, MM Docket No. 00-10, FCC 01-123, released April 13, 2001.

On August 6, 2003 the FCC adopted a Notice of Proposed Rulemaking⁷² to seek comment on rules for digital low power television and digital television translator stations. On September 9, 2004, the FCC adopted rules to allow for the digital conversion of LPTV and translator stations. While requiring the conversion to digital operation, the FCC did not set a digital transition deadline for LPTV and translator stations. The final transition date — on which analog operations will cease — will be considered in the FCC’s Third DTV periodic review proceeding.⁷³

On July 29, 2005 Senator Snowe introduced the Digital Translator and Low Power Television Transition Act (S. 1600), which seeks to give low-power stations adequate time for their transition by establishing a transition deadline of four years after the hard deadline Congress sets for the full-power digital television transition. Additionally, S. 1600 would establish a grant program within the National Telecommunications and Information Administration to defray the cost of upgrading translators and low power television stations from analog to digital. The grant program would be funded from a trust fund derived from proceeds of spectrum auctions held as a result of the full-power digital television transition.

S. 1932, the Deficit Reduction Omnibus Reconciliation Act of 2005, passed by the Senate on November 3, 2005, would have allocated \$200 million for a Department of Commerce-administered program to assist the digital conversion of low-power and translator television stations.

The House budget reconciliation bill, the Deficit Reduction Act of 2005 (H.R. 4241), would have directed \$3 million into a “Low-Power Digital-to-Analog Conversion Fund” which will be used to compensate low-power television stations (including Class A, translator, or booster television stations) for the cost of a digital-to-analog conversion device. Television translator stations, in particular, will need such a device in order to convert the digital signals received from their corresponding full-power television stations and provide analog signals to their customers. Grants would be limited to a maximum of \$400 per station which requires a digital-to-analog converter device.

P.L. 109-171 provides funding not to exceed \$10 million during FY2008-2009 to compensate low-power television stations (including Class A, translator, or booster television stations) for the cost of a digital-to-analog conversion device in order to convert the digital signals received from their corresponding full-power television stations and provide analog signals to their customers. In no case shall the compensation for a single digital-to-analog converter device exceed \$1000.

Additionally, funding not to exceed \$65 million during FY2009 will be available to reimburse low-power television stations for equipment to upgrade

⁷² *FCC Notice of Proposed Rulemaking in the Matter of Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, FCC 03-198, released August 29, 2003.

⁷³ For further information, see [http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-251978A1.pdf].

stations from analog to digital in rural communities. Both grant programs will be administered by the National Telecommunications and Information Administration of the Department of Commerce.

The Conference Report (S. 1932; H.Rept. 109-362) clarifies that “only full-power stations, not low-power stations must cease analog broadcasting by February 18, 2009.” Low-power stations may continue analog broadcasts after that date, subject to future decisions by the FCC on how to complete the digital transition for low-power stations. The conference report states that low-power stations (other than Class A stations) may continue broadcasting above channel 51 subject to FCC decisions “so long as those stations’ use of those channels is secondary to the use of those channels by the auction winners and public safety officials.”

Fees for Ancillary or Supplemental Services

The Telecommunications Act (P.L. 104-104) states that if a DTV licensee offers ancillary or supplemental services for which they receive a subscription fee or other compensation, the FCC “shall establish a program to assess and collect from the licensee...an annual fee or other schedule or method of payment...” The act further states that the collection of fees “shall be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource.”⁷⁴ Congress is overseeing the FCC’s actions regarding implementation of this law. Public interest groups have also maintained pressure on the FCC to establish a fee program, arguing that commercial broadcasters should compensate the American people for the use of the DTV spectrum, and that fees should be required out of fairness to those who paid for spectrum at FCC auctions (such as licensees for personal communications services).

In November 1998, the FCC adopted rules to require broadcasters to pay 5% of their gross revenues from ancillary or supplementary uses of DTV spectrum for which they charge subscription fees or other specified compensation.⁷⁵ These include subscription video, software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, and audio signals. Home shopping channels and “infomercials” are not subject to fees because the FCC did not consider them new services. The FCC has initiated a separate proceeding to determine how much non-commercial stations can use the DTV spectrum for revenue-generating services, and whether they should have to pay spectrum fees. Some consumer groups say that the FCC’s spectrum fees are not heavy enough on commercial broadcasters, arguing that most revenue will come from home shopping and infomercials. They also warn that public broadcasters should not be over-regulated, arguing that too heavy a burden placed on public broadcasters could impair their long-term viability.

⁷⁴ The Budget Resolution of 1997 (H.Con.Res.84) included a provision requiring broadcasters to pay a spectrum usage fee of \$2 billion over five years. Broadcasters strongly opposed that provision, however, and it was not included in the Budget Act of 1997.

⁷⁵ *FCC Report and Order on Fees for Ancillary or Supplementary Use of Digital Television Spectrum*, MM Docket No. 97-247, released November 19, 1998.

On October 11, 2002, the FCC ruled that noncommercial stations are required to use their entire digital capacity primarily for nonprofit, noncommercial, educational broadcast services. However, the FCC also ruled that the statutory prohibition against advertising on noncommercial broadcasts does not apply to any ancillary or supplementary services presented on an excess DTV channels that does not constitute broadcasting. The FCC further ruled that public stations must pay a fee of five percent of gross revenues generated by ancillary or supplementary services provided on their DTV service.⁷⁶

Public Interest Obligations of DTV

Broadcasters In March 1997, President Clinton established an Advisory Committee on Public Interest Obligations of DTV Broadcasters, to make recommendations on how DTV licensees should compensate the public for their licenses. Committee members were selected from government, the broadcasting industry, academia, and consumer interest organizations. After a series of public meetings in 1997 and 1998, the Committee submitted a set of recommendations to Vice President Gore in December 1998. The recommendations consist of mostly voluntary actions by broadcasters, including providing five minutes per night of air time for candidate-centered discourse in the 30 days prior to an election. Some panel members wanted to recommend mandating the free air time as well as other Committee proposals. The White House referred the report to the FCC, which on December 15, 1999, opened a Notice of Inquiry (NOI) proceeding to solicit public comment on public interest obligations of TV broadcasters as they transition to DTV (MM Docket No. 99-360).

After reviewing public comment, the FCC, in September 2000, issued the *DTV Public Interest Form* Notice of Proposed Rulemaking (NPRM) which sought to require television broadcasters (both digital and analog) to disclose on a quarterly standardized form how they are serving the public interest. Also in September 2000, the FCC issued the *Children's DTV Public Interest* NPRM (MM Docket No. 00-167), which focused on the obligation of broadcasters to provide educational and informational programming for children, and the requirement that licensees limit advertising in children's programs. The FCC has not yet issued any decisions in those proceedings. Given the significant amount of time that has passed, the Second Periodic Review of FCC rules and policies affecting DTV conversion, issued on January 27, 2003, has asked for further comment on the public interest obligation issue.⁷⁷ On August 4, 2004, the FCC adopted a Report and Order (FCC-04-192) which implements several steps identified in the Second Periodic Review. However, no action was taken regarding public interest obligations.

⁷⁶ *FCC Report and Order in the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees*, MM Docket No. 98-203, FCC 01-306, released October 17, 2001.

⁷⁷ NPRM, *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, pp. 39-42.

On September 9, 2004, the FCC adopted a Report and Order⁷⁸ addressing children's programming obligations for digital television broadcasters. The FCC issued guidelines on the obligation to provide educational programming for children and the requirement that children are protected from excessive and inappropriate commercial messages. Specifically, the Order increases the required amount of core educational programming proportionally to the amount of increased free video programming offered by the broadcaster on multicast channels. Regarding commercial limitations, the Order concludes that commercial limits apply to all digital programming directed at children 12 and under, whether the programming is provided on a free or pay multicast channel.⁷⁹

Two bills introduced into the 109th Congress address the issue of public interest obligations of DTV broadcasters. H.R. 2359, introduced on May 12, 2005 by Representative Watson, would establish minimum public interest requirements for multicast digital television channels. S. 616, introduced on May 12, 2005 by Senator Rockefeller, requires broadcasters providing digital television multicasts to increase educational and informational programming for children.

Tower Siting

One obstacle to the broadcasters' ability to offer DTV services is the opposition from state and local communities over the building of new signal transmission towers.⁸⁰ In most cases, DTV antennas can be built on top of existing towers used for analog TV broadcasting. If new towers are required, however, they must be constructed before the stations can transmit DTV signals. In August 1997, the FCC released an NPRM (FCC 97-182) to consider the preemption of state and local zoning restrictions on the siting, placement, and construction of DTV broadcasting facilities. In its January 18, 2001 Report and Order, the FCC concluded that "while some stations are facing problems with tower availability and/or local zoning issues, such problems do not seem to be widespread at this time."⁸¹ The FCC will continue to monitor the situation and intends to work with the involved parties as problems arise.

⁷⁸ *Report and Order and Further Notice of Proposed Rulemaking in the Matter of Children's Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167, FCC 04-221, released November 23, 2004, 54 pages.

⁷⁹ For more information see [http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-251972A1.pdf].

⁸⁰ For more information on DTV tower siting, see [<http://www.fcc.gov/mb/policy/dtv/>].

⁸¹ *FCC Report and Order and Further Notice of Proposed Rulemaking In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 01-24, p. 37.

Appendix 2. Legislation in the 109th Congress Related to Digital Television

H.R. 1646 (Harmon). Homeland Emergency Operations Response Act. Prohibits any delay in reassigning 24 MHz in the upper 700 MHz band (currently occupied by television broadcasters) for public safety purposes, and requires those frequencies to be operational by January 1, 2007. Introduced April 14, 2005; referred to Committee on Energy & Commerce.

H.R. 2354 (Sensenbrenner). TV Consumer Choice Act. Prohibits the FCC from requiring digital tuners in television receivers. Introduced May 12, 2005; referred to Committee on Energy and Commerce.

H.R. 2359 (Watson). Digital Television Accountability and Governance Enhancement Act of 2005 (DTV-AGE Act). Establishes minimum public interest requirements for multicast digital television channels. Introduced May 12, 2005; referred to Committee on Energy and Commerce.

H.R. 2512 (Regula). Digital Opportunity Investment Trust Act. Establishes a Digital Opportunity Investment Trust fund, part of which would provide Public Television Digital Educational grants to noncommercial educational television stations. Introduced May 19, 2005; referred to Committee on Energy and Commerce and to Committee on Education and the Workforce.

H.R. 3032 (Gene Green). TV Truth Act of 2005. Requires manufacturers and retailers to provide disclosure to consumers that analog televisions will no longer receive broadcast transmissions after the public broadcast spectrum changes to digital. Introduced June 22, 2005; referred to Committee on Energy and Commerce.

H.R. 4569 (Sensenbrenner). Digital Transition Content Security Act of 2005. Requires certain analog conversion devices to preserve digital content security measures. Introduced December 16, 2005; referred to Committee on Judiciary.

S. 616 (Rockefeller). Indecent and Gratuitous and Excessively Violent Programming and Control Act of 2005. Requires broadcasters providing digital television multicasts to increase educational and informational programming for children. Introduced March 14, 2005; referred to Committee on Commerce, Science, and Transportation.

S. 1023 (Dodd). Digital Opportunity Investment Trust Act. Establishes a Digital Opportunity Investment Trust fund, part of which would provide Public Television Digital Educational grants to noncommercial educational television stations. Introduced May 12, 2005; referred to Committee on Health, Education, Labor, and Pensions.

S. 1268 (McCain). Spectrum Availability for Emergency Response and Law Enforcement to Improve Vital Emergency Services Act (SAVE LIVES Act). Designates digital transition date as December 31, 2008, and authorize \$468 million — drawn from spectrum auction proceeds — to supply digital-to-analog converter

boxes to over-the-air households with incomes not exceeding 200% of the poverty level. Introduced June 20, 2005; referred to Committee on Commerce, Science and Transportation.

S. 1600 (Snowe). Digital Translator and Low Power Television Transition Act. Amends the Communications Act of 1934 to ensure full access to digital television in areas served by low-power television. Introduced July 29, 2005; referred to Committee on Commerce, Science and Transportation.

S. 1932 (Gregg). Deficit Reduction Omnibus Reconciliation Act of 2005. Title III is the Digital Transition and Public Safety Act of 2005, which sets a digital transition deadline of February 17, 2009, and allocates up to \$1.5 billion for a program to assist consumers in the purchase of converter boxes. Passed Senate, November 3, 2005. House agreed to conference report (H.Rept. 109-362), December 19, 2005. Senate agreed to conference report with amendments, December 21, 2005. House agreed to amended conference report, February 1, 2006. **P.L. 109-171** signed by President, February 8, 2006.

S. 2686 (Stevens). Communications, Consumer's Choice, and Broadband Deployment Act of 2006. Contains a number of provisions related to the digital television transition, including mandating DTV consumer education, requiring large cable operators to provide to their customers their local broadcasters' digital signals in both digital and "downconverted" analog formats through February 14, 2014, and giving the FCC statutory authority to proceed with its broadcast flag rule, with certain limitations. Introduced May 1, 2006; referred to Committee on Commerce, Science and Transportation.