

Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 18, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.582 is amended in the table in paragraph (a)(1) by revising the tolerances for “barley, grain”, “mango” and “papaya”; removing the footnote; and alphabetically adding new commodities to read as follows:

180.582 Pyraclostrobin; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
* * * *	*
Avocado	0.6
* * * *	*
Barley, grain	1.4
* * * *	*
Canistel	0.6
* * * *	*
Mango	0.6
* * * *	*
Oat, grain	1.2
Oat, hay	18

Commodity	Parts per million
Oat, straw	15
Papaya	0.6
* * * *	*
Sapodilla	0.6
Sapote, black	0.6
Sapote, mamey	0.6
* * * *	*
Star apple	0.6
* * * *	*

[FR Doc. E8–5893 Filed 3–21–08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 27, 54, 73, and 76

[CS Docket No. 07–148; FCC 08–56]

DTV Consumer Education Initiative

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules requiring industry to participate in a coordinated, nationwide, consumer outreach campaign. Despite extensive consumer outreach efforts by the Commission and others, a large percentage of the public is not sufficiently informed about the DTV transition. The rules in this item will ensure that the full benefits of the transition are realized and experienced by consumers.

DATES: The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Lyle Elder, Lyle.Elder@fcc.gov, or Eloise Gore, Eloise.Gore@fcc.gov, of the Media Bureau, Policy Division, (202) 418–

2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams on (202) 418–2918, or via the Internet at PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission’s Report and Order in MB Docket No. 07–148, FCC 08–56, adopted February 19, 2008 and released March 3, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission’s copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document was analyzed with respect to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104–13 and contains new and modified information collection requirements, including the following: (1) Broadcasters must provide information to their viewers about the DTV transition, and must report those efforts to the Commission and the public; (2) MVPDs must provide monthly notices about the DTV transition in their customer billing statements; (3) manufacturers of television receivers and related devices must provide notice to consumers buying their devices of the transition’s impact on that equipment; (4) DTV.gov Partners must provide the Commission with regular updates on their consumer education efforts; (5) ETCs that receive federal universal service funds must provide notice of the transition to their low income customers and potential customers; and (6) the winners of the 700 MHz spectrum auction will be required to report their consumer education efforts. The information collection requirements contained in this Report and Order will be submitted to the Office of

Management and Budget (“OMB”) for review under Section 3507(d) of the PRA. The Commission will seek OMB approval for these information collection requirements and forms in accordance with OMB’s emergency processing rules. The Commission will publish a separate **Federal Register** Notice seeking comments from OMB, the general public, and other Federal agencies on the final information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, we will also seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees” in the **Federal Register** Notice seeking comment on the information collections.

Summary of the Report and Order

I. Introduction

1. As discussed below, in this Report and Order we adopt several proposals relating to consumer education about the digital television (“DTV”) transition. As the Nation’s full-power television stations transition from analog broadcast television service to digital broadcast television service, the Commission has been committed to working with representatives from industry, public interest groups, and Congress to make the significant benefits of digital broadcasting available to the public. The digital transition will make valuable spectrum available for both public safety uses and expanded wireless competition and innovation. It will also provide consumers with better quality television picture and sound, and make new services available through multicasting. These innovations, however, are dependent upon widespread consumer understanding of the benefits and mechanics of the transition. The Congressional decision to establish a hard deadline of February 17, 2009, for the end of full-power analog broadcasting has made consumer awareness even more critical.

2. As explained in more detail below, we thus impose the following requirements in this Order. First, broadcasters must provide on-air information to their viewers about the DTV transition, by compliance with one of three alternative sets of rules, and must report those efforts to the Commission and the public. Second, multichannel video programming distributors (MVPDs) must provide monthly notices about the DTV transition in their customer billing statements. Third, manufacturers of

television receivers and related devices must provide notice to consumers of the transition’s impact on that equipment. Fourth, DTV.gov Partners must provide the Commission with regular updates on their consumer education efforts. Fifth, companies participating in the Low Income Federal Universal Service Program must provide notice of the transition to their low income customers and potential customers. Sixth, the winners of the 700 MHz spectrum auction must report their consumer education efforts. Finally, we offer our assistance to the National Telecommunications and Information Agency (NTIA) in policing and enforcing the requirements of the digital converter box retail program. We find that these requirements are necessary to ensure that the American public is adequately prepared for the full-power digital transition, but that they will no longer be necessary after the full-power transition is fully complete. This Order therefore provides that these requirements will be in place for a limited time only.

II. Background

3. Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. As the National Consumers League describes it, “[t]he transition to DTV is probably the most significant event for television-viewers since the invention of television itself. It is crucial for people to be aware of the change, understand its impact, and be able to make sound choices.” We agree, and the Commission has been actively engaged in DTV consumer education and outreach efforts since before the establishment of the hard full-power transition deadline. Our longstanding and ongoing efforts include a wide range of activities, both completed and planned. For instance, the Chairman recently announced the creation of a DTV Task Force, formalizing the relationships among the numerous Offices and Bureaus involved in the transition. The goal of the Task Force is to facilitate a smooth transition that minimizes the burdens on consumers while maximizing their opportunities to benefit from it. As an extension of existing coordination efforts, the Task Force will: meet regularly to discuss and direct ongoing DTV transition efforts, coordinate with other federal agencies, shares ideas, and address any problems that arise or appear imminent. The members of the Task Force will also meet regularly with various stakeholders from industry and federal, state, local, and tribal governments.

4. Representatives John D. Dingell, Chairman of the Committee on Energy and Commerce, and Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, recently wrote to the Commission to express interest in the pace and scope of consumer education about the full-power transition. As the Congressmen observed, “the Commission is particularly well suited to lead this effort given its existing expertise and resources.” They proposed a number of specific actions that they believe the Commission should take. As discussed above, many of these recommendations are already being actively pursued by the Commission. The Commission released a Notice of Proposed Rulemaking on July 21, 2007 requesting comment on the best means of creating a coordinated, national DTV consumer education campaign. Comments were due September 17, 2007 and reply comments were due October 1, 2007. We reviewed over 30 comments, 6 reply comments, and over 100 ex parte presentations and comments from a wide range of sources, including individuals, trade associations, broadcasters, and nonprofits.

III. Discussion

5. Insofar as the actions referenced in the Letter require regulatory action by the Commission, we adopt those proposals. As a general matter, it suggests that “the Commission could use its existing authority to compel industry to contribute time and resources to a coordinated, national consumer education campaign.” We agree that the Commission should take whatever steps we can to promote a coordinated, national DTV consumer education campaign. Some industry commenters have objected to these requirements on the ground that the Commission has insufficient statutory authority to implement them. These objections are discussed in more detail below. As Telecommunication for the Deaf and Hard of Hearing, et al. observe, we have broad authority to require educational outreach efforts concerning the DTV transition. The Commission is statutorily required to promote the orderly transition of full-power stations from analog to digital television, and we have exercised that mandate to, among other things, prevent the continued importation and interstate shipment of analog-only sets and to require retailers to label those analog-only sets they continue to legally sell. Our statutory authority allows us to facilitate the transition by adopting rules requiring the dissemination of essential information about the transition.

6. There is a clear and compelling need for educational efforts directed toward consumers. As APTS found in its most recent quarterly consumer survey on the DTV transition, a majority of Americans do not fully understand the transition. Moreover, as the Commission's Consumer Advisory Committee (CAC) points out, a substantial number of Americans have not yet made the switch to digital. By the end of 2007, it was expected that only one-third of households would have a digital television. Of households that rely on over-the-air (OTA) broadcasts, only seven percent own a digital television. Furthermore, the households that principally rely on OTA broadcasts are the most vulnerable and arguably the most difficult to reach; almost half have annual incomes of less than \$30,000, and two-thirds are headed by someone over 50 years of age or someone for whom English is a second language. Thus, we must take immediate and effective action to ensure that viewers are informed of the effect that the full-power digital transition will have on them and the options that are available to them to make the transition to digital television without losing full-power television service. This Order focuses on actions that television broadcasters, MVPDs, telecommunications carriers, retailers, and manufacturers must take to inform consumers about the transition. Nonetheless, because of the national importance of this issue, we also strongly encourage radio broadcasters to engage in efforts to educate and inform their listeners. Such efforts could be an important complement to consumer outreach by other public and private sector groups between now and the transition.

A. Broadcaster Education and Reporting

7. The National Association of Broadcasters (NAB) and other broadcast industry commenters have argued that there is a public interest benefit in preserving some flexibility on the part of broadcasters to serve the needs of viewers in their widely divergent communities, and we agree. We therefore adopt rules that give both commercial and noncommercial broadcasters a choice of education and reporting requirements. Furthermore, we acknowledge that the ongoing educational efforts of industry have made a notable impact on consumer awareness, and anticipate continuing effective and creative measures from the industry to increase viewer awareness of the full-power digital transition. As discussed throughout this *Order*, we find a broad-based consumer education

mandate essential given the importance of consumer awareness to the digital transition, but we will allow broadcasters the flexibility to choose which of these different plans to follow.

8. Although the sets of requirements are distinct, we find that they each entail a similar level of commitment and engagement on the part of broadcasters. Where the first option calls for more frequent PSAs, the second calls for longer ones, and the third for the same total amount of education with less restriction on length. Where the first and third options allow for PSAs in specified parts of the day, the second option requires greater focus on the hours when most viewers tune in. Where the first option does not require any long educational messaging, the second and third mandate a 30 minute program dedicated to in-depth education. Where Option One requires a set number of crawls, Option Two allows broadcasters to use a variety of in-program messaging techniques to inform viewers, and Option Three requires only PSAs and longer messages. While Options One and Three do not directly address special additional education measures during the final months of the full-power transition, Option Two is more comprehensive in its focus on alternative approaches. All plans require quarterly reporting of both mandatory and voluntary outreach and education efforts. This will allow the Commission not only to monitor compliance, but also to stay informed of the creative approaches being taken by disparate broadcasters all over the country, and continue to serve in its role as the primary transition educator and coordinator of transition education efforts.

9. The Commission's education requirement will go into effect upon the effective date of the rules. Every full-power commercial broadcaster must participate in option One or Two, and noncommercial broadcasters must participate in option One, Two, or Three. Whichever Option is elected, every broadcaster must conduct consumer outreach and education pursuant to that set of rules. Under each of the options, broadcasters must report on its educational and outreach activities by filing Form 388 with the Commission and placing it in the station's public file. Each broadcaster will elect the option with which it will comply no later than the first reporting deadline under the plans, by noting its chosen plan when it first files Form 388. Failure to comply with either the education or reporting requirements

under any Option may result in enforcement action.

1. Broadcaster Education Option One

a. Option One Consumer Education Requirements

10. Broadcasters who opt to comply with this option will be required to regularly air a mix of PSAs and crawls, with increasing frequency as the full-power transition approaches, that explain the various important issues of the full-power transition and explain how viewers can find more information. Specifically, a station must air one transition PSA, and run one transition crawl, in every quarter of every day. This requirement applies separately to a station's analog channel and its primary digital stream. This requirement will increase to two PSAs and crawls per quarter per day on April 1, 2008, and to three of each on October 1, 2008. For the purposes of these education requirements, each broadcast day can be broken into four quarters; 6:01 a.m. to 12 p.m., 12:01 p.m. to 6 p.m., 6:01 p.m. to 12 a.m., and 12:01 a.m. to 6 a.m. Stations are required to air PSAs or crawls at various times in any given day part, and we expressly require that at least one PSA and one crawl per day be run during primetime hours. For the purposes of this item, "primetime" is defined as the hours between 8 p.m. and 11 p.m. in the Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain and Central time zones. We expect that broadcasters will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. In addition, we require that the transition PSAs be closed-captioned regardless of their duration, notwithstanding the exemption in 79.1(d)(6).

11. These requirements will expire for most broadcasters on March 31, 2009. This DTV education requirement will continue for any station that has requested or been granted an extension to serve less than its full authorized service area after March 31, 2009. Some broadcasters filed comments in the Third DTV Periodic describing circumstances that may prevent them from completing construction to reach their fully authorized service area by February 18, 2009. Any station that does not reach all of its pre-transition viewers on February 18, 2009 will be required to continue its education efforts until its request for extension has been withdrawn or denied, or until a granted extension has expired. We will increase these requirements if we find, based on the overall progress of DTV consumer

education, that it is necessary to revise the frequency, content or duration of the PSAs or crawls on a station-by-station basis, for a particular region, or for the country as a whole.

12. Crawls must run during programming for no less than 60 consecutive seconds across the bottom or top of the viewing area, and be provided in the same language as a majority of the programming carried by the station. Although we do not dictate the exact content of the crawls, we find that, over the 60 second duration, they must repeat a message that conveys the following information:

- On February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may lose the signal being viewed unless the viewer takes action.
- That viewers can get more information by telephone or online, and how to do so.

The crawl may also, at the broadcaster's discretion, provide other information, such as, for example, contact information for the DTV Transition Coalition.

13. Required PSAs must be at least 15 seconds. Each PSA must provide, at a minimum, the same information as required for crawls, above. We acknowledge the creativity of the private sector, as noted by SBA, and do not mandate the form of PSAs other than to require that, over the course of a broadcaster's education campaign, they give more detail about the following subjects:

- What a viewer needs to do to continue watching the station, whether they are an OTA viewer or receive broadcast signals via their MVPD, and
- Where appropriate, specific details about the station's transition: for example, shifts in service area, channel numbering changes, the addition of multicast and/or High Definition channels, timing, etc.

14. Additionally, on-air outreach must contain no misleading or inaccurate statements. We do not limit stations to these efforts. For example, certain stations may find that additional PSAs in languages other than those in which a majority of their programming is presented would be beneficial to their viewers; for other stations, multilingual announcements may not be needed. Stations are free to use PSAs provided by outside sources such as NAB or networks, so long as their overall campaign touches on all the elements relevant to their particular transition. The flexibility of the rules we adopt today makes clear that we are focusing on Congress's command to promote an orderly full-power transition.

15. The Letter suggested that the Commission consider using its regulatory authority to "require television broadcasters to air periodic public service announcements and a rolling scroll about the digital transition." We note that although the Letter refers to "scrolls," commenters (including AARP, NAB, and APTS) understood this to refer to what in the closed captioning context we have called a "crawl." Indeed, the National Hispanic Media Coalition, which strongly supports PSA requirements and calls for "Y2K-level consumer education efforts," opposes vertical scrolls as unnecessary. Comments of NHMC at 3. For the sake of consistency and to reflect the generally understood intent of the proposal, we use the term "crawl" here. We have adopted this requirement, while giving broadcasters significant latitude to determine the best way to present the essential information on the timing and nature of the full-power transition and how to continue receiving the station's programming throughout and after the transition.

16. Most of the commenters who commented on this issue agreed with the Commission that broadcast consumer education efforts are the best way to reach viewers who will be most affected by the full-power transition, particularly those who rely primarily or exclusively on OTA television. For example, one commenter states that PSAs should be the "primary focus for transition education efforts," and that an education program including PSAs must be mandated to ensure public education "in a timely manner." It is also important not to simply rely on one form of on-screen education or the other. Crawls and PSAs convey information very differently, and reach different groups of people as a result. Given the growing use of personal video recorders and other devices that can be used for time-shifting and commercial skipping, many consumers might not be reached by education efforts, such as PSAs, that air only during programming breaks. At the same time, a crawl can not reach those viewers whose eyesight is not strong enough to read its comparatively small print, or who are not able to read at all. Using both methods will ensure that education efforts reach more viewers. Broadcaster commenters are generally in agreement regarding the importance of their role in consumer education; for instance, Entravision, a Spanish language broadcaster, supports mandatory PSAs. Even those broadcasters who oppose regulation in this matter say that, regardless of our decision here, they

plan to engage in consumer outreach and education that "far exceed any requirements the FCC could or should impose," because "the ability to reach every household is the foundation of broadcast television's public interest and operational success." A wide array of broadcaster activity is promised not just in this Commission docket, but also in testimony to Congress.

17. Despite commendable pledges by organizations like the State Broadcasters Association (SBA) and the National Association of Broadcasters (NAB), we find that regulatory action is the only way to ensure a sustained, nationwide, station-by-station effort. As the Benton Foundation observes, these organizations have no power to bind individual stations. We acknowledge and appreciate the leadership and coordination efforts of NAB, and anticipate continuing to work with it on additional voluntary efforts. At the same time, we are convinced that DTV consumer education needs to be a nationwide station-by-station effort. As SBA says, consumer education is "critical" because interruption of broadcast service to even a single home is "unacceptable." Our rules will ensure that the critical need for education is met in every market. NAB and APTS both argue that we can simply rely on the interests of all broadcasters in preserving their over-the-air audience, and that we therefore need not require any broadcaster education efforts. While we agree that broadcasters have every incentive to prepare their viewers for the transition, a "baseline requirement" is necessary to ensure the public awareness necessary for a smooth and orderly transition. We have adopted NAB's proposal as an alternative method by which stations can meet this baseline requirement. As the Commission's Consumer Advisory Committee points out, there will be a number of contrary pressures on local broadcasters over the next 12 months. For example, it is possible that the viewers most likely to be left behind due to an insufficient educational effort are the ones least demographically attractive to advertisers. Finally, potential advertising revenue from such sources as presidential and other political campaigns may make it tempting, in the short run, not to devote advertising time to transition education.

18. APTS suggests that public television stations be exempt from any requirements because they have a good track record of informing the public and because they are limited in the time they have to air public service announcements. We disagree because the rules we impose are designed to

complement efforts such as APTS'; if broadcasters are already engaging in these efforts, the rules will not be a burden. However, as with commercial stations, we have given noncommercial broadcasters the option to comply with our requirements via an alternative route.

19. *Statutory Authority.* The National Association of Broadcasters, alone among commenters, argues that the Commission does not have statutory authority to require that broadcasters inform their viewers of the full-power broadcast digital television transition. NAB argues that Section 326 of the Act, prohibiting us from interfering with the right of free speech by broadcasters, prevents us from acting here absent a grant of authority that specifically mentions DTV consumer education PSAs and crawls. We disagree. As discussed more fully in Section G, below, our actions here do not constitute an improper restriction on speech. NAB also asserts an artificially narrow conception of the Commission's statutory authority when it argues that we cannot act without a "specific statutory provision authorizing required PSAs and crawls, including content thereof." As noted above, Congress both mandated the digital transition and vested the Commission with the power to "prescribe such regulations as may be necessary for the protection of the public interest, convenience, and necessity" in connection with the digital transition.

20. Finally, broadcast licensees have a statutory obligation to "serve the public interest, convenience, and necessity." One can scarcely conceive a situation more illustrative of the "necessity" prong of this duty than the instant case, where certain viewers will cease having access to full-power broadcast services transmitted over the public airwaves on a date certain absent concerted informational efforts. There simply can be no national full-power digital broadcast transition if the very people who rely on broadcast television are unaware of it. As NAB acknowledges, "[t]he future of free-over-the-air television depends upon a smooth transition. * * * For this to happen, the American public must understand what all-digital broadcasting means for them."

21. Broadcasters must take some responsibility for educating the public that they are bound to serve. If a blizzard hits Chicago on February 18, 2009, all over-the-air viewers should be able to turn on their television and receive emergency information without missing a beat. Educating viewers so that they have access to digital

transmissions is a keystone of the transition which the FCC is statutorily required to effectuate, and broadcasters must play a central role in that process. In reviewing other regulations designed to advance the digital transition, the D.C. Circuit held in *Consumer Electronics Ass'n v. FCC* that "[g]iven Congress' instruction to end analog broadcasts * * * and the Commission's finding that [current trends were not such that the public would be ready for the transition], * * * the Commission reasonably determined to take action * * * so that the DTV transition may move at the pace required by Congress." As in *CEA*, we must take action to ensure the orderly transition of broadcast service to digital and we have the statutory authority to do so.

22. Finally, the imposition here is similar to existing requirements for broadcaster station identification and broadcast of license renewal notices. The change from analog to digital broadcasting is at least as fundamental to the operation of a station as the possession of a broadcast license, and of more practical import to viewers. Given the extremely minimal requirements for producing a compliant PSA or crawl and the indispensable role that television stations must play in educating their viewers in how they can continue to have access to full-power television service after the transition, it does not avail NAB to claim that these public notices are fundamentally different from other broadcast notice requirements because they are "furthering a government policy."

23. The Commission, in a similar context, enforced broadcaster public interest obligations by requiring digital television stations to participate in the emergency alert system ("EAS"). In that proceeding, NAB agreed with the Commission that participation in EAS was a natural extension of broadcaster public interest obligations. The order noted that exemption from this requirement would not be in the public interest. It also noted that if participation in the Emergency Alert System were voluntary, some communities could be left without an EAS source, and such messages are too important to risk missing "because a person is tuned to the wrong channel." Similarly, in the case of the transition, an exemption from consumer education is contrary to the public interest because the public has a right to know how televisions will function after February 17, 2009. A voluntary program is inadequate because transition information is too important to risk that some viewers will lack the necessary information because the licensee serving

them fails to provide that information in a timely fashion. If viewers see a blank screen on February 18, 2009 because they were not informed about the actions they needed to take to continue receiving television programming, they will effectively be deprived of access to all OTA television service—including EAS. The Commission imposed a similar requirement upon broadcasters pursuant to the Children's Television Act ("CTA").

b. Option One Reporting Requirements

24. A broadcaster choosing to comply with Option One will be required to electronically report its consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster's public file and, if the broadcaster has a public Web site, on that Web site. These reports will be made available on the Commission's Web site in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option One complete Form 388 and file it electronically in this docket (07-148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station's public inspection file by that same date. Because of the limited duration of the full-power transition period, only a limited number of these quarterly reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station's final quarter of mandated educational efforts, will be filed no later than April 10, 2009 for most stations. Stations that are required to continue educational efforts beyond March 31, 2009 must also continue to file these quarterly reports, up to and including the final quarter in which they have active educational requirements.

25. The Letter suggested that the Commission consider requiring "broadcast licensees and permittees to report, every 90 days, their consumer education efforts, including the time, frequency, and content of public service announcements aired by each station in a market, with civil penalties for noncompliance." It also suggested that the Commission consider imposing "interim requirements for detailing a broadcaster's consumer education efforts in the required local public inspection file, such as by including coverage about the digital transition in the issues/programs list compiled every three months or by making announcements in local newspapers or on-air similar to public notice requirements for new stations or license renewal."

26. Broadcasters generally oppose this reporting requirement. As discussed above, broadcaster education efforts are a central part of consumer education concerning the transition. We require reporting to enforce these consumer education initiatives and ensure that the necessary efforts are underway. As the National Hispanic Media Coalition observes, “[t]here is no satisfactory alternative to this reporting.” As with the Children’s Television Programming requirements, self-reporting allows broadcasters to verify for themselves that they are fulfilling their obligations. Furthermore, because of the importance of these education requirements and the relatively short time frame of the full-power transition, the Commission needs to be able to monitor compliance with and enforce those obligations in a way that is not prohibitively cost- and time-consuming. Self-reporting is the most effective way to do this.

27. As to the form and format of the reports, the AARP and others take the position that the reports should include detailed information about each airing of a PSA and its content, and should be filed quarterly. The Benton Foundation suggests that the reports be filed in electronic form, and also be placed in the broadcaster’s public file. As noted, we decline to require a specific format, but all of the above information must be included.

28. Given our statutory authority to require the PSAs and crawls, as discussed above, we also have authority to require broadcasters to document and report their compliance efforts. We have statutory authority under the Communications Act to require broadcasters to provide information about their programming to the public and the Commission. Providing information to the public about their transition education efforts will make broadcasters more accountable for their public interest obligation to promote the continued availability of free television programming and ensure a smooth transition. Sections 303(r) and 4(i) of the Communications Act provide ample authority for the reporting requirement because providing this information will help us ensure broadcasters are acting as public trustees and the Commission is fulfilling its duty to oversee the full-power transition. In addition, section 4(k) of the Communications Act expressly authorizes the Commission to collect information and data “as may be considered of value in the determination of questions connected with the regulation of interstate * * * radio communication and radio transmission of energy” to assist the Congress in its normal oversight

responsibilities. Determining whether the American public is adequately informed and educated about the full-power DTV transition is of significant concern to Congress, and the reporting requirements will assist the Commission in gathering this important information. In addition, these reporting requirements are “necessary for the protection of the public interest, convenience, and necessity” in connection with the digital transition because they will assist the Commission in assessing consumer understanding of the transition and in determining whether adjustments to the educational efforts must be made. Further, without broadcasters reporting their efforts, the public and the Commission will be unable to determine at renewal time whether stations have complied with the consumer education rules. Indeed, these requirements are similar to the long-standing issues/programs list requirements which require stations to list every three months their programs that have provided the most significant treatment of community issues and retain these lists in their public file. As with on-air identifiers, our broad authority under the Communications Act to carry out the public interest requirement permits us to have broadcasters provide public service announcements to effectuate the public interest standard. Although we have not previously required broadcasters to air public service announcements, we have required stations to broadcast certain on-air announcements, to give public notice in a local newspaper for certain broadcast applications, and to make available certain information in a public file.

29. Similarly, the Commission’s First Report and Order pursuant to the Children’s Television Act (“CTA”) relied on the authority cited above and the Commission’s authority to enforce the public interest obligations of broadcasters to impose upon broadcasters mandatory quarterly children’s programming reporting requirements. Here, the reporting requirement is much more lenient, as it is for a finite period of time.

2. Broadcaster Education Option Two

a. Option Two Consumer Education Requirements

30. We find that the record also supports permitting broadcasters to choose to comply with our rules by following the alternative plan offered by the National Association of Broadcasters. Under this option, a broadcaster must air an average of sixteen transition PSAs per week, and

an average of sixteen transition-related crawls, snipes, and/or tickers per week, over each quarter through the transition period between 5 a.m. and 1 a.m. No PSAs or crawls, snipes, and/or tickers aired between the hours of 1 a.m. and 5 a.m. will qualify as compliant for the purposes of these education requirements. Over the course of each calendar quarter, one fourth of all PSAs and crawls, snipes, and/or tickers must air between 6 p.m. and 11:35 p.m., Eastern and Pacific, and between 5 p.m. and 10:35 p.m., Central and Mountain. These requirements will expire for most broadcasters on March 31, 2009. This DTV education requirement will continue for any station that has requested or been granted an extension to serve less than its full authorized service area after March 31, 2009. Some broadcasters filed comments in the Third DTV Periodic describing circumstances that may prevent them from completing construction to reach their fully authorized service area by February 18, 2009. Any station that does not reach all of its pre-transition viewers on February 18, 2009 will be required to continue its education efforts until their request for extension has been withdrawn or denied, or until a granted extension has expired. This requirement applies separately to a station’s analog channel and its primary digital stream. As with broadcasters electing Option One, we expect that broadcasters electing Option Two will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. And, as under Option One, these transition PSAs must be closed-captioned. Stations are free to use PSAs produced in-house or provided by outside sources such as NAB or the networks.

31. Required PSAs must be at least 30 seconds in length. A broadcaster may, however, choose to air two PSAs of no less than 15 seconds in length in place of a single PSA of at least 30 seconds in length. Stations will also air at least one 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day prior to February 17, 2009.

32. Beginning on November 10, 2008, all stations must begin a 100-Day Countdown to the full-power transition. During this period, each station must air at least one of the following per day:

- *Graphic Display.* A graphic superimposed during programming content that reminds viewers graphically there are “x number of days” until the full-power transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The length

of time will vary from 5 to 15 seconds, at the discretion of the station.

- *Animated Graphic.* A moving or animated graphic that ends up as a countdown reminder. It would remind viewers that there are “x number of days” until the full-power transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

- *Graphic and Audio Display.* Option #1 or option #2 with an added audio component. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

- *Longer Form Reminders.* Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an “Ask the Expert” segment where viewers can call in to a phone bank and ask knowledgeable people their questions about the transition. The length of these segments will vary from 2 minutes to 5 minutes, at the discretion of the station (Some stations may also choose to include during newscasts DTV “experts” who may be asked questions by the anchor or reporter about the impending February 17, 2009 deadline).

b. Option Two Reporting Requirements

33. We also find that the record supports a requirement that broadcasters electing Option Two electronically report their consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster’s public file, just as under Option One. These reports will be made available on the Commission’s Web site in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option Two complete Form 388 and file it electronically in this docket (07–148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station’s public inspection file by that same date. Because of the short remaining duration of the full-power transition period, only a limited number of these quarterly reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station’s final quarter of mandated educational efforts, will be filed no later than April 10, 2009 for most stations. Stations that are required to continue educational efforts beyond March 31, 2009 must also continue to file these quarterly reports up to and including the final quarter in which

they have active educational requirements.

3. Broadcaster Education Option Three

a. Option Three Consumer Education Requirements

34. This option is open only to noncommercial broadcasters. We find that the record also supports permitting some broadcasters to choose to comply with our rules by following the alternative plan offered by the Association of Public Television Stations. Under this option, a broadcaster must air 60 seconds per day of on-air consumer education, in variable timeslots, including at least 7.5 minutes per month between 6 p.m. and 12 a.m. Beginning May 1, 2008, this requirement doubles, and beginning November 1, 2008, it increases again, to 180 seconds per day and 22.5 minutes per month between 6 p.m. and midnight. The transition PSAs must be closed-captioned. These requirements will expire for most broadcasters on March 31, 2009. Stations will also air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day prior to February 17, 2009. This requirement applies separately to its analog channel and its primary digital stream. As with broadcasters electing Option One, we expect that broadcasters electing Option Three will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. Stations are free to use PSAs produced in-house or provided by outside sources such as NAB or the networks. And, as under Option One, these transition PSAs must be closed-captioned.

b. Option Three Reporting Requirements

35. We also find that the record supports a requirement that noncommercial broadcasters electing Option Three electronically report their consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster’s public file, just as under Option One. These reports will be made available on the Commission’s Web site in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option Three complete Form 388 and file it electronically in this docket (07–148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station’s public inspection file by that same date. Because of the short remaining duration of the full-power transition period, only a limited number of these quarterly

reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station’s final quarter of mandated educational efforts, will be filed no later than April 10, 2009 for most stations. Stations that are required to continue educational efforts beyond March 31, 2009 must also continue to file these quarterly reports up to and including the final quarter in which they have active educational requirements.

4. Low-Power, Class A, and Translator Stations

36. Low-power (LP) broadcast stations are not required to cease broadcasting in analog as of February 17, 2009.

Although some already have or plan to independently transition to digital-only broadcasting, many of these stations will continue to broadcast in analog after the conclusion of the full-power transition. Thus, many consumers may receive some programming in digital and some programming in analog after the transition date. Those consumers with analog televisions who are reliant on over-the-air broadcasting will need to acquire a digital to analog converter box to continue watching television after the transition. Recently, concerns have been raised, by the Community Broadcasters Association among others, about the fact that the majority of Coupon Eligible Converter Boxes (CECBs) certified by NTIA are not capable of “passing through” analog signals from the antenna to a connected set. As a result, LP stations (including Class A and translator stations) that continue to broadcast in analog will not be viewable to OTA viewers who rely on a converter box, unless they use one of the boxes with pass-through capability.

37. This issue was raised before the Commission after the record in this rulemaking had closed, and we therefore do not have a record on it. Accordingly, we have an insufficient basis upon which to adopt consumer education requirements relating to this issue in the instant proceeding. Nonetheless, given that converter boxes are already on the shelves of many retailers, and coupons are in the process of being mailed to consumers, we recognize the urgency of the problem for those consumers who may have difficulty viewing these low power stations. We therefore urge all LP broadcasters, but particularly those that plan to continue analog-only broadcasting, to immediately begin educating their viewers about this issue. For instance, such stations could notify their viewers that (1) they are watching a low-power broadcast station that,

unlike full-power stations, may continue to offer analog service after February 17, 2009, and (2) viewers who plan to purchase a converter box in order to view digital signals should buy a model with analog pass-through capability in order to continue watching that station. The LP station could direct viewers to the NTIA converter box coupon program, and in particular the NTIA listing of certified converter boxes. In addition, NTIA will mail a list of current coupon-eligible converter boxes, noting with an asterisk those that have analog pass-through capability, to each household that receives converter box coupons. We also urge industry and our private and public sector partners to do what they can to educate consumers generally about this situation, and to assist in the effort to ensure that no American loses a signal due to the transition.

B. Multichannel Video Programming Distributor Customer Bill Notices

38. We will require that all MVPDs (e.g., DBS carriers, cable operators, open video system operators, private cable operators, etc.) provide notice of the full-power DTV transition to their subscribers in monthly bills or billing notices. To the extent that a given customer does not receive paper versions of either a bill or a notice of billing, that customer must be provided with equivalent monthly transition notices in whatever medium they receive information about their monthly bill. The notice must be provided as a "bill stuffer" or as part of an information section on the bill itself. It must be noticeable, and state that on February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may be unable to display full-power broadcast programming unless the viewer takes action. It must also note that viewers can get more information by going to <http://www.DTV.gov> or calling the MVPD at a number provided, and more information about the converter box program by going to <http://www.dtv2009.gov> or calling the NTIA at 1-888-DTV-2009. The notice may also, at the MVPD's discretion, provide contact information for the DTV Transition Coalition. The message should be provided in the same language or languages as the bill, and explain clearly what impact, if any, the transition will have on the subscriber's access to MVPD service. For example, DBS carriers must provide additional notice to all subscribers who do not receive local broadcast signals via satellite. This additional notice would explain the steps that these subscribers would need to take to continue

receiving broadcast signals, in particular the necessary steps if the subscriber relies on a tuner integrated into the DBS carrier's set-top box. The most important information may be to note that sets not connected to an MVPD service may need additional equipment (i.e. converter box) or may have to be replaced. MVPDs must begin including these monthly notices 30 days after the effective date of the rules and must continue including them monthly through March 2009. Beginning approximately one year before the full-power transition and running through March 2009 ensures that subscribers will be exposed to educational messages throughout the remainder of the transition, and will have sufficient opportunity to act on them.

39. The Letter suggested that the Commission consider requiring, "as a license condition or through customer service or other consumer protection or public interest requirements, all multichannel video programming distributors (MVPDs) to insert periodic notices in customer bills that inform consumers about the digital television transition and their customers' future viewing options, with civil penalties for noncompliance." These notices would go to all MVPD subscribers and provide them with information about the full-power transition generally and about how it will affect their service specifically. The New York State Consumer Protection Board is primarily concerned that MVPD subscribers understand what effects, if any, the transition will have on their service. The Benton Foundation not only supported this proposal, as "an optimal way to reach consumers that value television service," but also proposed a requirement that MVPDs run PSAs themselves. The National Cable and Telecommunications Association states in its comments that the cable industry has not only committed to exceed the Commission's proposal, but those of the commenters. The cable industry has committed to include DTV transition notices in subscriber bills, on a monthly basis beginning in 2008. Indeed, these commitments have been made not only to the Commission, but also to the Commerce Committees of both the U.S. House of Representatives and the U.S. Senate. NCTA argues that, given these commitments, the Commission should not impose any requirements for MVPD DTV education efforts.

40. Of course, we welcome the efforts of NCTA and its members. We note, however, that the commitments of NCTA do not bind its member cable operators, and that, of course, it does not speak for all MVPDs. DIRECTV and

EchoStar, while pledging active education efforts both for their subscribers and for OTA viewers state that they have no plans to provide periodic notices with bills. Verizon, similarly, opposes the use of notices in bills, on the grounds that they would be expensive, ineffective, and potentially counterproductive. We disagree with Verizon because the overall record in this proceeding indicates that bill notices would contribute significantly to consumer education efforts. Such notices would reach viewers who are engaged with television viewing and well positioned both to act on the information regarding any OTA sets they may have and to serve as a source of information for others.

41. Several industry commenters object that the Commission does not have statutory authority to impose the notice requirement. We conclude, however, that we have ancillary authority to adopt notice requirements for Multichannel Video Programming Distributors under Titles I, III, and VI of the Communications Act of 1934, as amended ("Act"). Courts have long recognized that, even in the absence of explicit statutory authority, the Commission has authority to promulgate regulations to effectuate the goals and provisions of the Act if the regulations are "reasonably ancillary to the effective performance of the Commission's various responsibilities" under the Act. The Supreme Court has established a two-part ancillary jurisdiction test: (1) The subject of the regulation must be covered by the Commission's general grant of jurisdiction under Title I of the Communications Act; and (2) the regulation must be reasonably ancillary to the Commission's statutory responsibilities. The requirements we adopt here regulate the disclosure obligations of companies providing services that fall within the Commission's jurisdiction under Titles I, III, and VI, advance our statutory obligation to promote the digital transition, and serve the public interest. We conclude, therefore, that we have ancillary jurisdiction to adopt DTV transition notice requirements in this proceeding.

42. For the most part, commenters do not argue that the Commission lacks jurisdiction over either the DTV transition or MVPDs. Rather, they argue that requiring MVPDs to provide billing notices regarding the full-power DTV transition is not reasonably ancillary to our authority over either broadcast television or MVPDs. Verizon and NTCA both argue that there is no connection between multichannel

distribution and the full-power broadcast television transition, and that this would be a broadcast regulation imposed on parties not engaged in broadcasting. On the contrary, MVPDs are an inextricable part of the television market. Both DBS and cable have mandatory carriage requirements, and all MVPDs have requirements concerning retransmission of broadcast signals. Without the stations and viewers affected by this transition, MVPDs would be in a very different business. The Commission is statutorily obligated to promote the orderly transition to digital television, "a critical step in the evolution of broadcast television." Further, the Commission is authorized to "make such rules and regulations * * * as may be necessary in the execution of its functions," and to "[m]ake such rules and regulations * * * not inconsistent with law, as may be necessary to carry out the provisions of this Act * * *"

43. The rules we adopt today advance these statutory mandates and serve the public interest. USTA argues that the connection between such notices and the Commission's DTV transition authority is weak, because "the customers who would receive those notices do not rely on the broadcast signals that will cease on the transition date." Many of those very customers do in fact rely on broadcast signals for at least some of the televisions in their homes. Accurate and timely communication of the impending change from analog to digital transmission is a critical disclosure for all consumers. Not only will every DTV-educated consumer accelerate the spread of knowledge about the full-power transition, but as described in COAT's comments, many MVPD subscribers will in fact be directly impacted by the transition, even if only because they have some OTA sets in their home. Furthermore, broadcast channels carried on a system will tend to be clearer and crisper as a result of the broadcaster switch to digital, and every station broadcasting programming in HD, not just those carried pursuant to retransmission consent, will be available in HD. As discussed above, over half of consumers still are not aware of the impending full-power digital transition. Clearly, voluntary industry efforts to date have not been sufficient to ensure consumer awareness of the upcoming transition to digital television. Such consumer awareness is critical to our missions of promoting public safety and an orderly digital transition.

44. Exercising ancillary jurisdiction to adopt DTV transition notice

requirements for MVPDs is consistent with prior exercises of the Commission's authority. The Commission previously relied on its authority under the Act and the ACRA to impose an analog-only labeling requirement in order to promote the orderly transition to digital television. In addition, the Commission recently relied on its ancillary jurisdiction in requiring interconnected Voice over Internet Protocol (VoIP) service providers to distribute to their subscribers stickers or labels warning if E911 service may be limited or unavailable, and to instruct subscribers to place them on or near the equipment used in conjunction with the interconnected VoIP service. The Commission also has numerous other labeling and disclosure requirements designed to further its statutory objectives and to protect consumers. In sum, therefore, we conclude that we have ancillary authority to adopt DTV transition notice requirements for MVPDs.

45. USTA makes two additional arguments about the limits of our ancillary jurisdiction in this case. First, it argues that because NTIA was given some express authority over DTV transition education, it "creates a strong presumption" that Congress did not mean for the Commission to have any authority in this area at all. On the contrary, Congress had no need to give the Commission specific authority over any one element of the transition, because as discussed above we have general authority to promulgate rules to advance the transition. USTA also argues, again almost in passing, that the Commission "may" not be permitted to exercise ancillary jurisdiction in any manner that could be seen as content-related regulation of speech. In support of this argument, USTA cites only the 2002 DC Circuit decision that struck down the Commission's video description requirements. *MPAA v. FCC* can not, however, be reasonably read to impose such a sweeping rule. The Court's decision focuses on the inability of the Commission to rely on section 1 of the Act as a source of authority for restricting programming content. In this case, section 1 is not the primary source of the Commission's authority, and programming content is not at issue. More to the point, the *MPAA* Court pointed to a clear Congressional directive that specifically spoke to video description and limited the Commission's sphere of authority to the creation of a report. Here, on the other hand, Congress has endowed the Commission with general authority to

prescribe regulations that will "promote the orderly transition to digital television."

C. Consumer Electronics Manufacturer Notices

46. We require that parties that manufacture, import, or ship interstate television receivers and devices designed to work with television receivers (including digital-to-analog converter boxes like the NTIA Coupon Eligible Converter Boxes) include information with those devices explaining to consumers what effect, if any, the full-power DTV transition will have on their use. This information must be included with all devices shipped, beginning on the effective date of these rules, until March 31, 2009. As with the notices included in MVPD bills, the information may be in any form preferred by the manufacturer. It must be noticeable, contain the minimum information about the full-power transition described in paragraph 12, above, and explain clearly what impact, if any, the transition will have on the use of the device. For example, with receivers with a digital OTA tuner, one sufficient form of notice would be a sticker on the outside of the packaging that reads: "Digital Television Transition Notice: This television receiver will display over the air programming after the end of full-power analog broadcasting on February 17, 2009. Some older television receivers may need a converter box to display over the air digital programming, but should continue to work as before for other purposes (e.g., for watching LPTV, Class A, or translator stations still broadcasting in analog, watching pre-recorded movies, or playing video games). For more information, please call [the manufacturer], go to <http://www.DTV.gov>, or, for converter box information, go to <http://www.dtv2009.gov> or call the NTIA at 1-888-DTV-2009."

47. As noted above, this requirement applies not only to television receivers, but also to electronic devices that are designed to be connected to, and are dependent on, television receivers. Notices included with these devices, which include DVD players and recorders, VCRs, and monitors, must not only provide the basic information about the transition. They must also make clear that, after the transition, the device will not serve its function, in regard to full-power OTA signals, unless connected to a device with a digital tuner.

48. The Letter suggested that the Commission consider requiring "manufacturers to include information

with television receivers and related devices about the transition, with civil penalties for noncompliance.” The only commenter to oppose this proposal, LG, conceived of it applying only to “television sets,” and argued that the existing Labeling Order already resolves this issue. On the contrary, the Labeling Order’s requirements apply only to sets without a digital receiver, which are no longer being manufactured for the U.S. market. Therefore the two sets of requirements do not overlap at all. The Benton Foundation suggests that the included information should be standardized by the Commission.

49. No commenter challenged the Commission’s statutory or constitutional authority to impose this requirement. As in the analog receiver labeling order, our authority to impose this requirement is ancillary to our responsibilities under the Communications Act and the All Channel Receivers Act. An electronic device that is dependent for its use, in whole or in part, on over-the-air reception of television broadcast channels, is an “apparatus” “incidental to * * * transmission” of television broadcasts and, therefore, within the scope of our Title I subject matter jurisdiction. As discussed in more detail in paragraphs 5 and 19–23, above, the Commission is statutorily obligated to promote the orderly transition to digital television. Ensuring that consumers know how it will affect their devices, and why they may suddenly stop working or change their functionality, is essential to achieving that goal.

D. DTV.gov Partner Consumer Education Reporting

50. We require DTV.gov Transition Partners to report their consumer education efforts, as a condition of continuing Partner status. Reports should be filed into the record of this proceeding on a quarterly basis, beginning on April 10, 2008. Additionally, individual copies of the reports should be sent, via electronic mail or hard copy format, to the Chief and to the Chief of Staff of the Commission’s Consumer and Governmental Affairs Bureau, as well as sent electronically to dtvreporting@fcc.gov. This is in line with the Letter’s suggestion that the Commission consider requiring “partners identified on the Commission’s digital television Web site to report their specific consumer outreach efforts.”

51. We appreciate the efforts made so far by our DTV.gov Partners to keep us apprised of their consumer education and outreach activities. As we move closer to the full-power transition date,

the Commission will necessarily be accelerating its efforts, and further emphasizing its role as the coordinator and clearinghouse for DTV transition education. As NAB and MSTV observe, “coordination is critical to ensure that, in addition to messaging, industry, government agencies and other stakeholders are not either (1) unnecessarily duplicating consumer education efforts or (2) failing to target key segments of the American population. The need for coordination is further underscored by the limited financial resources of the Commission.” No commenters opposed this proposal, and several supported it. Furthermore, NAB and MSTV describe the DTV Transition Coalition as already committed to regularly updating the Commission. Therefore, moving forward we will require that DTV.gov Partners provide us with quarterly updates on their specific consumer outreach efforts, and we anticipate that we will use this full range of information to work with Partners on future education efforts. Any Partner listed that fails to work with the Commission in this process may lose Partner status and be removed from the DTV.gov Partners page.

E. Consumer Electronics Retailer Training and Education

52. We adopt the suggestion in the letter that the Commission work “with NTIA to require retailers who participate in the converter box coupon program to detail their employee training and consumer information plans and have Commission staff conduct spot inspections to ascertain whether such objectives are being met at stores.” A number of commenters are in favor of this proposal. The Telecommunications Regulatory Board of Puerto Rico supports it because “direct contact with customers will play a crucial role in educating people on the DTV transition.” We agree that retailers can play a central role, and we plan to work with NTIA to ensure that retailers are fulfilling their commitment to the converter box program. As the Consumer Electronics Retailers Coalition has explained, consumer electronics retailers independently planned to engage in extensive employee training and consumer outreach regarding the transition. These outreach efforts began early, as Radio Shack explains, with a standardized tip sheet developed and made available for distribution by all retailers. Several large retailers, including Circuit City, Target, and Best Buy, assured the Commission of their intention to engage in extensive outreach, and have since demonstrated an admirable degree of

focus, ingenuity, and dedication to the needs of viewers as they approach the digital transition. Enforcement Bureau field agents will regularly visit participating retailer stores across the country to assess their employee training and consumer education efforts and whether the retailers’ objectives are being met at stores. Through ongoing and close coordination, the Enforcement Bureau will provide the results of these site visits to NTIA for review and appropriate action. We appreciate and encourage these efforts on the part of retailers, particularly participants in the NTIA converter box program.

F. Other Proposals

1. Federal Universal Service Low-Income Program Participant Notices

53. We will require that all eligible telecommunications carriers (ETCs) that receive federal universal service funds provide DTV transition information in the monthly bills of their Lifeline/Link-Up customers. Lifeline and Link-Up (Lifeline/Link-Up) are universal service low-income programs. Lifeline provides low-income consumers with discounts off of the monthly cost of telephone service for a single telephone line in their principal residence, while Link-Up provides low-income consumers with discounts off of the initial costs of installing telephone service. Similar to the requirements for MVPDs, the notice must be provided as a “bill stuffer” or as part of an information section on the bill itself. It must be noticeable, and state that on February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may be unable to display full-power broadcast programming unless the viewer takes action. It must also note that viewers can get more information by going to <http://www.DTV.gov>, and more information about the converter box program by going to <http://www.dtv2009.gov> or calling the NTIA at 888–DTV–2009. The notice may also, at the ETC’s discretion, provide contact information for the DTV Transition Coalition. The notice should be provided in the same language or languages as the bill. If the ETC’s Lifeline/Link-Up customer does not receive paper versions of either a bill or a notice of billing, then that customer must be provided with equivalent monthly transition notices in whatever medium they receive information about their monthly bill. Finally, ETCs that receive federal universal service funds must provide this same basic information as part of any other Lifeline or Link-Up publicity campaigns. The customer bill notice requirement will

run concurrently with the MVPD bill notice requirement (i.e., from 30 days after the effective date of these rules through March 2009), and the publicity requirement will run for the same period.

54. The Letter suggested that the Commission “require, as an interim measure, that telecommunications carriers that receive funds under the Low Income Federal universal service program * * * notify each of their low income customers of the digital transition and include such a notice in their required Lifeline and Link-Up publicity efforts.” The strongest support for this requirement came from the New York State Consumer Protection Board, which suggested that “all telecommunications providers notify their low-income customers of the transition through their current Lifeline outreach efforts.” The Benton Foundation and the Commission’s Consumer Affairs Committee both suggest that we should “encourage” telecommunications companies to engage in this type of outreach, particularly with their low income customers, but they do not support a mandate. Several commenters oppose the requirement, arguing that the Commission lacks a sufficient nexus to exercise ancillary jurisdiction. All argue that this would be unconstitutional compelled speech. We disagree with these commenters for the reasons explained in Section G, below. Verizon also argues that this type of notice would confuse subscribers rather than educate them, and that these notices would lead to flooding phone company call centers with questions about the DTV transition. Finally, NTCA claims that the IRFA is deficient because it does not mention LECs. We reject NTCA’s argument. The Commission provided sufficient notice, under the APA, that regulation of LECs was being considered. Furthermore, the Commission’s FRFA has considered the possible economic impact on LECs as required under the RFA. We agree with the consumer advocates, and adopt the above proposals.

55. We conclude that we have authority under Title I of the Act to impose the DTV Consumer Education requirements on ETCs that receive federal universal service funds. Ancillary jurisdiction may be employed, in the Commission’s discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is “reasonably ancillary to the effective performance of [its] various responsibilities.” Both

predicates for ancillary jurisdiction are satisfied here.

56. First, section 2(a) of the Act grants the Commission subject matter jurisdiction over [the services provided by] telecommunications carriers. Section 254(e) provides that only eligible telecommunications carriers are eligible to receive federal universal service funds. Therefore, all ETCs that receive federal universal service funds are telecommunications carriers, and as a result, are the subject of the Commission’s subject matter jurisdiction.

57. Second, our analysis requires us to evaluate whether imposing the DTV Consumer Education requirements is reasonably ancillary to the effective performance of the Commission’s various responsibilities. We find that sections 309 and 1 of the Act provide the requisite nexus. Section 309 requires the Commission to “take such actions as are necessary * * * to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009. * * *” In a survey on the DTV transition, the GAO found that over-the-air households are more likely to have lower incomes than cable or satellite households and that approximately 48 percent of exclusive over-the-air viewers have household incomes less than \$30,000. The Commission already has in place the Lifeline/Link-Up programs that provide discounts off the initial installation and monthly costs of telephone service to millions of low-income consumers. Because the DTV transition will greatly affect lower income households and the Lifeline/Link-Up programs already serve this same demographic, we have an already established communication path that can be used to further the success of the DTV transition. By communicating with these lower income households, we ensure that all Americans will have the knowledge they need in order to prepare for the DTV broadcast transition. We therefore find that the extension of the DTV Consumer Education requirements to ETCs that receive federal universal service funds and are required to advertise to low-income consumers is reasonably ancillary to the effective performance of our duty to ensure the success of the DTV transition under the Digital Television and Public Safety Act of 2005.

58. Further, section 1 of the Act charges the Commission with responsibility for making available “a rapid, efficient, Nation-wide, and world-

wide wire and radio communication service * * * for the purpose of promoting safety of life and property through the use of wire and radio communication.” In light of our statutory mandate to clear the broadcast spectrum for public safety use, it is important that the Commission take all steps necessary to ensure that the DTV transition occurs without delay. Further, Americans’ reliance on their televisions for emergency alerts through the country’s Emergency Alert System requires that we ensure that all Americans have the ability to receive emergency notifications through their televisions. If Americans are unable to receive this potential life-saving information because they are unaware of the DTV broadcast transition, this might result in tragic consequences. Therefore, ensuring that all Americans receive notice of the upcoming DTV transition, including those that have been identified as at risk of not receiving the necessary information, is a critical step to achieving our statutory mandate to promote public safety. Thus, we conclude that extending the DTV Consumer Education requirements to ETCs that receive federal universal service funds is “reasonably ancillary to the effective performance of [our] responsibilities” under sections 309 and 1 of the Act, and “will ‘further the achievement of long-established regulatory goals’” to ensure the success of the DTV transition and promote the safety of life and property.

2. 700 MHz Auction Winner Consumer Education Reporting

59. We will require winning bidders in the 700 MHz spectrum auctions (Auctions 73 and 76) to detail what, if any, DTV transition consumer education efforts they are conducting. The Letter suggested that, “given the significant stake of 700 MHz auction winners in a successful transition, the Commission could require those entities to report their specific consumer outreach efforts.” The rule we adopt conforms with this proposal. No commenters expressed opposition to this proposal. Specifically, during the DTV transition we will require each entity obtaining a 700 MHz license to file this report with the Commission on a quarterly basis, with the first such report due by the tenth day of the first calendar quarter following the initial grant of the license authorization that the entity holds.

3. Consumer Contact Points

60. With respect to comments regarding the need for a toll-free call center staffed with people skilled in answering questions about the full-

power DTV transition, we emphasize that staff in the Commission's existing Consumer Center, including Spanish speakers, are available to take calls and e-mails about all aspects of the DTV transition and have been specifically trained to inform and assist consumers with any questions or concerns they may have. In addition, we note that NTIA, as part of its DTV transition education initiative, has established a center devoted specifically to taking calls about digital-to-analog converter boxes and the coupon program. Since January 1, 2008, the center has been staffed with representatives able to field and respond to calls in multiple languages, including English, Spanish, Chinese, Vietnamese, Tagalog, Russian, and French. The Commission and NTIA are working to coordinate their consumer center activities with the goal of ensuring that calls and e-mails to either agency, in whatever language, are handled in a thorough, consistent matter and that consumers can be transferred, when appropriate, from one agency to the other.

G. First Amendment Analysis

61. The actions we take in this Order to ensure that television viewers are fully informed about the digital transition are entirely consistent with the First Amendment, because they are a narrowly tailored means of advancing the government's substantial interests in furthering the digital transition. The government's interests in promoting the continued availability of free television programming and in ensuring a smooth transition from analog to digital full-power television service are undoubtedly substantial. Free television service is a vital part of the Nation's communications system, and is particularly important for viewers who cannot afford other means of receiving video programming. In order to ensure uninterrupted access to over-the-air television programming after the transition, it is essential that the viewing public understand that full power analog signals will cease on February 17, 2009, and that television equipment without a digital tuner will require additional equipment or connections to continue receiving programming after that date.

62. As discussed above, the record indicates that a substantial number of households are at risk of losing television service after February 17, 2009. Approximately 22.5 million households rely solely on over-the-air broadcast television, and of those households only seven percent currently own a digital television set. Millions of households subscribing to

an MVPD service have at least one set receiving over-the-air television signals. The record indicates, however, that the majority of Americans remain unaware of the DTV transition. One recent survey reveals that 51.3% of Americans have no idea that the DTV transition is taking place, and only 19.8% are "very much aware" of the transition. The government thus has a substantial interest in ensuring that the public is fully informed about the DTV transition and the steps necessary to continue receiving over-the-air broadcast signals after the transition.

63. The consumer education requirements we adopt today are narrowly tailored to advance these substantial governmental interests. Our rules are targeted at the specific industry groups that are best positioned to reach households most at risk of losing television service in February 2009. PSAs and crawls transmitted by the over-the-air broadcasters are, by definition, well-calculated to reach viewers of over-the-air television. But the record also shows that millions of MVPD customers use over-the-air broadcast as a secondary source of television service. Requiring MVPDs to provide information regarding the digital transition in their bill inserts serves to ensure that MVPD households with additional over-the-air analog televisions will be prepared for the digital transition. Likewise, telecommunications carrier participants in the Low Income Federal Universal Service Program are uniquely situated to reach low-income households—one of the consumer groups identified as most at risk of losing television service after the transition. And the steps we take with regard to manufacturers and retailers recognize the importance to consumers of information provided at the point-of-sale regarding the capabilities of the equipment that they are purchasing.

64. Industry groups have acknowledged the significant role they must play in informing consumers about the transition. Thus, NAB reports that the broadcast industry has embarked on an "unparalleled and unprecedented" "multi-faceted" consumer education campaign designed to "reach out to all demographics, all geographical areas, urban and rural communities, the young and the old" that includes both PSAs and crawls. NCTA reports that the cable industry has launched a \$200 million digital TV transition consumer education campaign which "seeks to reach all cable customers and millions of non-cable viewers with useful information about the transition to digital television" that includes invoice

messages on billing statements. DBS providers, the consumer electronics industry, retailers, and video and telephone service providers have all voluntarily committed to participate in efforts to educate the public about the DTV transition. Thus, to a large extent, the measures we adopt today do not impose an additional burden on the affected industries beyond their current voluntary efforts..

65. Despite their stake in the successful completion of the digital transition, broadcasters nonetheless argue that mandated PSAs and crawls constitute compelled speech in violation of the First Amendment. We disagree. First, we note that a less rigorous standard of First Amendment scrutiny applies where broadcasting is at issue. Even if this were not the case, the government has broad powers to require the disclosure of "factual and uncontroversial information" where commercial speech is concerned, especially to "dissipate the possibility of consumer confusion or deception," as long as such requirements are reasonably related to the government's regulatory goals. Here, the broadcaster PSAs and crawls we require are needed to eliminate any confusion stemming from the continuing public ignorance of the digital transition—in particular, they are necessary to ensure that over-the-air viewers are not misled into thinking that the analog signals that are now being transmitted will remain available after February 17, 2009. We also emphasize that the information we require about the digital transition is purely factual and not subject to dispute. And so far as the broadcasters are concerned, our requirements involve commercial speech, since they relate directly to the broadcasters' economic interest in ensuring that viewers maintain access to broadcast television and successfully transition to digital television.

66. Similarly, we are not persuaded by the First Amendment objections raised by video service and telephone providers. Both industry groups have a direct link to viewers who will be affected by the transition, and through direct communication with their customers they are invaluable in ensuring that the American public is prepared for the transition. Requiring MVPDs and Low Income Federal Universal Service Program participants to send notices to their customers about the DTV transition is thus a reasonable means of ensuring that word gets out to all groups that will be affected by the transition. It is thus a narrowly tailored means of advancing the government's

substantial interests in ensuring a smooth and orderly transition.

67. Nothing in the Supreme Court's plurality decision in *Pacific Gas & Elec. Co. v. Public Utility Comm'n of Calif.*, 475 U.S. 1 (1986), is to the contrary. In that case, the State agency ordered a utility to include in its billing envelopes a third-party newsletter containing a message with which the company disagreed. The purpose of the agency order was, among other things, to assist groups * * * that challenge [the utility] in the Commission's ratemaking proceedings in raising funds." The agency order thus did "not simply award access to the public at large; rather, it discriminate[d] on the basis of the viewpoints of the selected speakers." In this case, by contrast, the message we require is purely factual and noncontroversial—it must only describe when the transition will occur, the listing of how consumers can obtain additional information, a very basic explanation of potential impact on the consumer and actions the consumer may take. There is nothing in the required disclosure that could interfere with the provider's ability to communicate its own message, and indeed the MVPD or telephone provider may use the opportunity to market its own service. For this reason, the requirements fall comfortably within the government's power to order reasonable disclosures to serve the public interest, and will likewise empower consumers to take actions necessary to adjust to the digital transition.

IV. Procedural Matters

A. Final Regulatory Flexibility Analysis

68. As required by the Regulatory Flexibility Act of 1980 ("RFA"), the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to the Report and Order (FCC 08–56). The FRFA, which was contained in Appendix A of the Report and Order, is set forth below.

69. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking (Notice). The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The comments responsive to the IRFA are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

70. This Report and Order adopts rules requiring industry to participate in a coordinated, nationwide, consumer

outreach campaign. Despite extensive consumer outreach efforts by the Commission and others, a large percentage of the public is not sufficiently informed about the DTV transition. This is a serious concern because the many benefits of the transition could be severely limited by insufficient consumer awareness. Therefore, this Report and Order adopts a number of proposals based on specific potential Commission initiatives raised by Congressmen Dingell and Markey. Our goals in doing so are to further educate consumers about the digital television transition; to engage all sectors of the television industry in support of that transition; and, in so doing, to facilitate the nation's transition to digital broadcast television.

71. First, the rules require all full-power television broadcasters to provide on-air transition education to their viewers. Broadcasters must comply with one of three alternative sets of rules in providing such information to their viewers and must report these consumer education and outreach efforts to the Commission and the public. Second, MVPDs must provide monthly notices about the DTV transition in their customer billing statements. Third, manufacturers of television receivers and related devices must provide notice to consumers of the transition's impact on that equipment. Fourth, DTV.gov Partners must provide the Commission with regular updates on their consumer education efforts. Fifth, companies participating in the Low Income Federal Universal Service Program must provide notice of the transition to their low income customers and potential customers. Sixth, the winners of the 700 MHz spectrum auction must report their consumer education efforts to the Commission and the public.

2. Summary of Issues Raised by Public Comments in Response to the IRFA

72. We received one comment in response to the IRFA. The Reply Comments of the National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (Collectively, NTCA/OPASTCO) filed comments expressing concern about the lack of reference to local exchange carriers (LECs) in Section C of the IRFA. NTCA/OPASTCO argued that the absence of LECs from the IRFA constituted a failure to consider those operators, thus rendering the IRFA deficient as to small telephone providers. We disagree, and find that sufficient notice was clearly provided to LECs and their representatives, as

demonstrated by the comments and replies filed in this docket. We find that the interests of small operators, like NTCA/OPASTCO's members, have been considered throughout the rulemaking process.

3. Description and Estimate of the Number of Small Entities to Which the Report and Order Will Apply

73. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The rules adopted herein will directly affect small television broadcast stations, small MVPDs (cable operators and satellite carriers) and other small entities, such as LECs, consumer electronics (CE) retailers and CE manufacturers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

74. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than \$13.0 million in annual receipts. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." The Commission has estimated the number of licensed commercial television stations to be 1,376. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) have revenues of \$13.0 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. The

Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

75. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

76. *Class A TV, LPTV, and TV translator stations.* The rules adopted herein may also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, 4,518 licensed TV translators and 11 TV booster stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

77. *Cable and Other Subscription Programming.* The SBA has developed a small business size standard for cable and other subscription programming, which includes all such companies generating \$13.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite services, fixed-satellite services, home satellite dish services, multipoint distribution services, multichannel multipoint distribution service, instructional television fixed service, local multipoint distribution service, satellite master antenna television systems, and open video systems. According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules adopted herein. We address below each service individually to provide a more precise estimate of small entities.

78. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, the majority of these firms can be considered small.

79. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators,

for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

80. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

81. *Satellite Carriers.* The term "satellite carrier" includes entities providing services as described in 17 U.S.C. 119(d)(6) using the facilities of a satellite or satellite service licensed under Part 25 of the Commission's rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies. As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is

licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.

82. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Subscription Programming. This definition provides that a small entity is one with \$13.5 million or less in annual receipts. Currently, only two operators—DirecTV and EchoStar Communications Corporation (“EchoStar”)—hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

83. Fixed-Satellite Service (“FSS”). The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites. The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Cable and Other Subscription Programming, which includes all such companies generating \$13.5 million or less in revenue annually. Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Both of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could

similarly use FSS frequencies, although we are not aware of any entities that might do so.

84. Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems. PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Subscription Programming includes PCOs and, thus, small entities are defined as all such companies generating \$13.5 million or less in annual receipts. Currently, there are more than 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately one million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCOs qualify as small entities.

85. Home Satellite Dish (HSD) Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Subscription Programming, which includes all such companies generating \$13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry more than 500 channels of programming combined; approximately

350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data show that, as of June 2005, there were 206,358 households authorized to receive HSD service. The Commission has no information regarding the annual revenue of the four C-Band distributors.

86. Open Video Systems (OVS). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (“RCN”), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

87. Wireless Cable Systems. Wireless cable systems use the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”), and Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”), frequencies in the 2 GHz band to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. We estimate that the number of wireless cable subscribers is

approximately 100,000, as of March 2005. Id. Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As previously noted, the SBA definition of small entities for Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.

88. *Wireless Cable Systems (Commission Auction Standard)*. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Subscription Programming. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small MDS (or BRS) providers as defined by the SBA and the Commission's auction rules.

89. Educational institutions are included in this analysis as small entities; however, the Commission has not defined a small business size standard for ITFS (now EBS). We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

90. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. Moreover, the

Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years. These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

91. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

92. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the

44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

93. *Retailers*. The rules adopted herein will apply only to retailers that choose to participate in the converter box coupon program. The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having \$8 million or less in annual receipts. The list of retailers who will be participating will not be finalized until March 2008, but they will likely include dedicated consumer electronics stores and internet-based stores.

94. *Radio, Television, and Other Electronics Stores*. The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having \$8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under \$5 million, and 177 firms had sales of \$5 million or more but less than \$10 million. Thus, the majority of firms in this category can be considered small.

95. *Electronic Shopping*. According to the Census Bureau, this economic census category "comprises establishments engaged in retailing all types of merchandise using the Internet." The SBA has developed a small business size standard for Electronic Shopping, which is: All such entities having \$23 million or less in annual receipts. According to Census Bureau data for 2002, there were 4,959 firms in this category that operated for the entire year. Of this total, 4,742 firms had annual sales of under \$10 million, and an additional 133 had sales of \$10 million to \$24,999,999. Thus, the majority of firms in this category can be considered small.

96. *Electronics Equipment Manufacturers.* The rules adopted herein will apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities

under the SBA definition. We, therefore, conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

4. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements for Small Entities

97. The rules adopted by this Report and Order impose reporting, recordkeeping and other compliance requirements on small entities. The Report and Order establishes rules requiring industry to participate in a coordinated, nationwide, consumer outreach campaign, and does not create alternative requirements for small entities. Some elements of the Report and Order are voluntary, applying, for instance, only to DTV.gov Transition Partners or participants in the NTIA Converter Box Coupon Program. The mandatory requirements vary for different sectors of the telecommunications industry.

5. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

98. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

99. The National Association of Broadcasters has expressed its intention to make informative PSAs available to all broadcasters, even non-members, which will reduce the cost burden of the requirement to air them. Also, the mandatory broadcaster filing does not require a specialized form or extensive information gathering. Most importantly, although these requirements will impose some costs on small broadcasters, they will also ensure that small broadcasters continue to retain their audiences after the transition by fully informing viewers of the steps necessary to keep watching. Small broadcasters rely completely on their viewing audience for their revenue stream, so this benefit should far

outweigh any costs for this temporary requirement.

100. Small MVPDs will have costs for printing "bill stuffer" transition notices to include with their bills and bill notices. These costs can be somewhat ameliorated by the use of electronic and automatic billing, and the transition education campaign could potentially result in an increase of MVPD subscriptions from over-the-air subscribers and increased equipment rentals from current subscribers who wish to extend service to all of their televisions prior to the transition. Furthermore, MVPDs will have an additional 30 days to prepare for notice distribution. The costs for small MVPDs will therefore, likely not be significant.

101. The costs of reporting outreach efforts to the Commission by the winners of the 700 MHz auction will be de minimis, consisting solely of narrative reports in a flexible format describing outreach efforts the winner has chosen to make. On the other hand, small manufacturers of television receivers and related equipment, and small providers of telecommunications services to low-income households, will have costs to produce and distribute transition notices to their customers and subscribers, although ETCs will have an additional 30 days to prepare for notice distribution. These costs will not be any greater for small than for large companies, however. The very limited nature of the notification requirements for both groups mean that no lighter burden could be placed on small entities without essentially eliminating the benefit to consumers of a comprehensive transition education campaign.

6. Report to Congress

102. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

103. The Paperwork Reduction Act Analysis, which was contained in Section IV. of the Report and Order (FCC 08–56), is set forth at the beginning of this document in the Supplementary Information.

C. Congressional Review Act

104. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

D. Additional Information

105. For more information on this *Report and Order*, please contact Lyle Elder, Lyle.Elder@fcc.gov, or Eloise Gore, Eloise.Gore@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

V. Ordering Clauses

106. *It is ordered* that, pursuant to the authority contained in Sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this Report and Order is adopted and the Commission's rules are hereby amended as set forth in Appendix B. We find good cause for the rules, forms and procedures adopted in this Report and Order to be effective upon publication of the summary of the Report and Order in the **Federal Register** to ensure that consumers are informed about the digital television transition on February 17, 2009, the statutory deadline for all full power television broadcasters to transition to all digital service, provided, however, that the rules, forms and requirements contain information collection requirements subject to the PRA and are not effective until approved by the OMB. As described in this Order, the Commission has found that the public must be better informed regarding the digital television transition prior to its conclusion on February 17, 2009. Because of the limited period of time remaining prior to that date, we believe it is essential that coordinated, nationwide education efforts begin as soon as possible. Without sufficient accurate information to guide decisionmaking, consumers may be unprepared for the digital transition when it arrives, and may be unable to obtain critical information in emergencies after the transition. In such instances, consumers would be financially harmed and deprived of service at a critical time. Because delay can result in such harms to consumers and because affected parties will be afforded a reasonable opportunity to comply with the rule, we find that there is good cause to expedite the effective date of this rule. For these reasons, we are also requesting emergency PRA approval from OMB. The Commission will publish a notice in the **Federal Register** announcing when OMB

approval for these rule sections has been received and thus when these rules will take effect.

107. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

108. *It is further ordered* that the Commission shall send a copy of this Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 15

Communications equipment, Digital Television, Digital Television Equipment, Labeling, Radio, Reporting and recordkeeping requirements.

47 CFR Part 27

Communications common carriers, Digital Television, Radio, Reporting and recordkeeping requirements, Wireless Communications.

47 CFR Part 54

Communications common carriers, Digital Television, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 73

Communications equipment, Digital Television, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable Television, Digital Television, Multichannel Video Programming Distributors, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 15, 27, 54, 73, and 76 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

■ 2. Section 15.124 is added to read as follows:

§ 15.124 DTV Transition Notices by Manufacturers of Televisions and Related Devices.

(a) The requirements of this section shall apply to television receivers and related devices. Related devices are electronic devices that are designed to be connected to, and operate with, television receivers, and which include, but are not limited to, DVD players and recorders, VCRs, and monitors, set-top-boxes, and personal video recorders. (b) Television receivers and related devices shipped between March 27, 2008 and March 31, 2009 must include notices about the digital television (DTV) transition. These notices must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from <http://www.DTV.gov> or this manufacturer at [telephone number], and from <http://www.dtv2009.gov> or 1-888-DTV-2009 for information about subsidized coupons for digital-to-analog converter boxes; and

(3) Explain clearly what effect, if any, the DTV transition will have on the use of the receiver or related device, including any limitations or requirements associated with connecting a related device to a DTV receiver.

(c) Parties that manufacture, import, or ship interstate television receivers and related devices are responsible for inclusion of these notices.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 2. Section 27.20 is added to read as follows:

§ 27.20 Digital Television Transition Education Reports.

(a) The requirements of this section shall apply only with regard to WCS

license authorizations in Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, and Block D in the 758–763 MHz and 788–793 MHz bands.

(b) By the tenth day of the first calendar quarter after the initial grant of a WCS license authorization subject to the requirements of this section—and on a quarterly basis thereafter as specified in paragraph (c) of this section—the licensee holding such authorization must file a report with the Commission indicating whether, in the previous quarter, it has taken any outreach efforts to educate consumers about the transition from analog broadcast television service to digital broadcast television service (DTV) and, if so, what specific efforts were undertaken. Thus, for example, if the license authorization is granted during the April-June quarter of 2008, the licensee must file its first report by July 10, 2008. Each quarterly report, either paper or electronic, must be filed with the Commission in Docket Number 07–148. If the quarterly report is a paper filing, the cover sheet must clearly state “Report,” whereas if the report is filed electronically using the Commission’s Electronic Comment File System (ECFS), the “Document Type” on the cover sheet should indicate “REPORT.”

(c) The reporting requirements under this section cover the remaining period of the DTV transition. Accordingly, once the licensee files its quarterly report covering the first quarter of 2009, the requirements of this section terminate.

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Section 54.418 is added to read as follows:

§ 54.418 Digital Television Transition Notices by Eligible Telecommunications Carriers.

(a) Eligible telecommunications carriers (ETCs) that receive federal universal service funds shall provide their Lifeline or Link-Up customers with notices about the transition for over-the-air full power broadcasting from analog to digital service (the “DTV Transition”) in the monthly bills or bill notices received by such customers beginning April 26, 2008 and concluding in March 2009.

(b) The notice must be provided as part of an information section on the bill

or bill notice itself or on a secondary document mailed with the bill or bill notice, in the same language or languages as the bill or bill notice. These notices must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation’s transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from <http://www.DTV.gov>, and from <http://www.dtv2009.gov> or 1–888–DTV–2009 for information about subsidized coupons for digital-to-analog converter boxes;

(c) If an ETC’s Lifeline or Link-Up customer does not receive paper versions of either a bill or a notice of billing, then that customer must be provided with equivalent monthly notices in whatever medium they receive information about their monthly bill.

(d) ETCs that receive federal universal service funds shall provide information on the DTV Transition that is equivalent to the information provided pursuant to paragraph (b)(2) of this section as part of any Lifeline or Link-Up publicity campaigns conducted by the ETC between March 27, 2008 and March 31, 2009.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

■ 2. Section 73.674 is added to read as follows:

§ 73.674 Digital Television Transition Notices by Broadcasters.

(a) Each full-power commercial and noncommercial educational television broadcast station licensee or permittee must air an educational campaign about the transition from analog broadcasting to digital television (DTV). For each such commercial station, a licensee or permittee must elect, by March 27, 2008 to comply with either paragraph (c) or (d) of this section. For each such noncommercial station, a licensee or

permittee must elect March 27, 2008 to comply with paragraph (c), (d), or (e) of this section. A licensee or permittee must note their election via the filing of Form 388 as required by §§ 73.3526 and 73.3527.

(b) The following requirements apply to paragraphs (c), (d), and (e) of this section:

(1) The station must comply with the requirements of the paragraph it elects with respect to its analog channel and its primary digital stream.

(2) Any Public Service Announcement aired to comply with these requirements must be closed-captioned, notwithstanding § 79.1(d)(6) of this chapter.

(3) The campaign must begin no later than March 27, 2008 and continue at least through March 31, 2009. After March 31, 2009, any station that has filed a request for an extension to serve its full operating area or is operating under such an extension must continue its education campaign until the request is withdrawn or denied or, if granted, until it expires.

(c) Consumer Education Campaign Option One:

(1) From March 27, 2008 through March 31, 2008, a licensee or permittee must, at a minimum, air one transition-related public service announcement (PSA), and one transition-related informative text crawl, in every quarter of every broadcast day. This minimum will increase to two of each, per quarter, from April 1, 2008 through September 30, 2008, and to three of each, per quarter, from October 1, 2008 through the conclusion of the campaign. At least one PSA and one informative text crawl per day must be aired between 8 p.m. and 11 p.m. in the Eastern and Pacific time zones, and between 7 p.m. and 10 p.m. in the Mountain and Central time zones.

(2) For the purposes of this section, each broadcast day consists of four quarters; 6:01 a.m. to 12 p.m., 12:01 p.m. to 6 p.m., 6:01 p.m. to 12 a.m., and 12:01 a.m. to 6 a.m.

(3) Informative text crawls must:

(i) Air during programming;

(ii) Air for no fewer than 60 consecutive seconds;

(iii) Be displayed so that the text travels across the bottom or top of the viewing area at the same speed used for other informative text crawls concerning news, sports, and entertainment information;

(iv) Be presented in the same language as a majority of the programming carried by the station;

(v) Be displayed so that they do not block and are not blocked by closed-

captioning or emergency information; and

(vi) Contain at least the following information, but may contain more, provided they contain no misleading or inaccurate statements:

(A) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(B) More information is available by phone and online, and provide appropriate contact information, including means of contacting the station or the network.

(4) Public service announcements must have a duration of no fewer than 15 consecutive seconds, and contain, at a minimum, the information described in paragraph (c)(3)(vi) of this section. They must also address the following topics at least once each during every calendar week:

(i) The steps necessary for an over-the-air viewer or a subscriber to a multichannel video programming distributor to continue viewing the station after the transition;

(ii) Changes in the geographic area or population served by the station during or after the transition;

(iii) The channel on which the station can be viewed after the transition;

(iv) Whether the station will be providing multiple streams of free video programming during or after the transition;

(v) Whether the station will be providing a High Definition signal during or after the transition;

(vi) The exact date and time that the station will cease analog broadcasting, if it has not already done so; and

(vii) The exact date and time that the station will begin digital broadcasting on its post-transition channel, if it has not already done so.

(d) Consumer Education Campaign Option Two:

(1) A licensee or permittee must, at a minimum, air an average of sixteen transition-related PSAs per week, and an average of sixteen transition-related crawls, snipes, and/or tickers per week, over a calendar quarter.

(2) For the purposes of calculating the average number of PSAs aired, a 30-second PSA qualifies as a single PSA, and two 15-second PSAs count as a single PSA.

(3) PSAs, crawls, snipes, and/or tickers aired between the hours of 1 a.m. and 5 a.m. do not conform to the requirements of this section and will not count toward calculating the average number of transition-related education pieces aired.

(4) Over the course of each calendar quarter, 25 percent of all PSAs, and 25 percent of all crawls, snipes, and/or tickers, must air between 6 p.m. and 11:35 p.m. (Eastern and Pacific time zones) or between 5 p.m. and 10:35 p.m. (Central and Mountain time zones).

(5) Stations must also air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day prior to February 17, 2009.

(6) Beginning on November 10, 2008, all stations will begin a 100-Day Countdown to the transition. During this period, each station must air at least one of the following per day:

(i) *Graphic display.* A graphic superimposed during programming content that reminds viewers graphically there are “x number of days” until the transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

(ii) *Animated graphic.* A moving or animated graphic that ends up as a countdown reminder. It would remind viewers that there are “x number of days” until the transition. They will be visually instructed to call a toll-free number and/or visit a Web site for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

(iii) *Graphic and audio display.* Option #1 or option #2 with an added audio component. The length of time will vary from 5 to 15 seconds, at the discretion of the station.

(iv) *Longer form reminders.* Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an “Ask the Expert” segment where viewers can call in to a phone bank and ask knowledgeable people their questions about the transition. The length of these segments will vary from 2 minutes to 5 minutes, at the discretion of the station (some stations may also choose to include during newscasts DTV “experts” who may be asked questions by the anchor or reporter about the impending February 17, 2009 deadline).

(e) Consumer Education Campaign Option Three:

(1) Only a licensee or permittee of a noncommercial television station may elect this option. Under this option,

from March 27, 2008 through April 30, 2008, a noncommercial broadcaster must, at a minimum, air 60 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 7.5 minutes per month between 6 p.m. and 12 a.m. From May 1, 2008, through October 31, 2008, a broadcaster must, at a minimum, air 120 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 15 minutes per month between 6 p.m. and 12 a.m. From November 1, 2008, through March 31, 2009, a broadcaster must, at a minimum, air 180 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 22.5 minutes per month between 6 p.m. and midnight.

(2) Noncommercial stations must also air a 30-minute informational program on the digital television (DTV) transition between 8 a.m.–11:35 p.m. on at least one day prior to February 17, 2009.

■ 3. Section 73.3526 is amended by adding paragraph (e)(11)(iv) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(11) * * *

(iv) *DTV transition education reports.*

For full-power commercial TV broadcast stations, both analog and digital, on a quarterly basis, a completed Form 388, DTV Consumer Education Quarterly Activity Report. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter must be filed electronically with the Commission in Docket Number 07–148 using the Commission's Electronic Comment File System (ECFS). The “Document Type” on the cover sheet must indicate “REPORT.” Stations electing to conform to the requirements of Section 73.674(b) must also provide the form on the station's public Web site, if such exists. The Report shall be separated from other materials in the public inspection file. The first Report, covering the first quarter of 2008, must be filed no later than April 10, 2008.

The Reports must continue to be included up to and including the quarter in which a station concludes its education campaign. These Reports shall be retained in the public inspection file for one year. Licensees and permittees shall publicize in an appropriate manner the existence and location of these Reports.

■ 4. Section 73.3527 is amended by adding paragraph (e)(13) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * *

(e) * * *

(13) DTV transition education reports.

For full-power noncommercial educational TV broadcast stations, both analog and digital, on a quarterly basis, a completed Form 388, DTV Consumer Education Quarterly Activity Report. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter must be filed electronically with the Commission in Docket Number 07–148 using the Commission's Electronic Comment File System (ECFS). The "Document Type" on the cover sheet must indicate "REPORT." Stations electing to conform to the requirements of § 73.674(b) must also provide the form on the station's public Web site, if such exists. The Report shall be separated from other materials in the public inspection file. The first Report, covering the first quarter of 2008, must be filed no later than April 10, 2008. The Reports must continue to be included up to and including the quarter in which a station concludes its education campaign. These Reports shall be retained in the public inspection file for one year. Licensees and permittees shall publicize in an appropriate manner the existence and location of these Reports.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.1630 is added to read as follows:

§ 76.1630 MVPD digital television transition notices.

(a) Multichannel video programming distributors (MVPDs) shall provide subscribers with notices about the transition for over-the-air full power broadcasting from analog to digital service (the "DTV Transition") in the monthly bills or bill notices received by subscribers beginning April 26, 2008 and concluding in March, 2009.

(b) The notice must be provided as part of an information section on the bill or bill notice itself or on a secondary document mailed with the bill or bill notice, in the same language or languages as the bill or bill notice. These notices must:

(1) Be in clear and conspicuous print;
(2) Convey at least the following information about the DTV transition:

(i) After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from <http://www.DTV.gov> or this MVPD at [telephone number and Web site if available], and from <http://www.dtv2009.gov> or 1–888–DTV–2009 for information about subsidized coupons for digital-to-analog converter boxes;

(3) And explain clearly what effect, if any, the DTV Transition will have on the subscriber's access to MVPD service. It must also note that analog sets not connected to an MVPD service may need additional equipment (i.e., converter box) or may have to be replaced.

(c) To the extent that a given customer does not receive paper versions of either a bill or a notice of billing, that customer must be provided with equivalent monthly notices in whatever medium they receive information about their monthly bill.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A: Final Regulatory Flexibility Act Analysis [Reserved.]

Note: The Final Regulatory Flexibility Act Analysis, which was contained in Appendix A of the Report and Order (FCC 08–56), is set forth in Section IV.A. of the Supplementary Information, above.

Appendix B: Rule Changes [Reserved.]

Note: The rules codified in the Report and Order (FCC 08–56), which were contained in Appendix B of the Report and Order, are set forth following the signature block of this document.

Appendix C: Broadcaster Reporting Form**DTV Consumer Education Quarterly Activity Report****Instructions**

This form should be used to provide the Federal Communications Commission (FCC) with information pertaining to all station activity to educate consumers on the transition to digital television (DTV). All stations should log DTV Transition-Related Public Service Announcements (PSAs) and other DTV activities using the appropriate house (identification) numbers. These logs or records should include the date and time that each DTV activity occurred. This form must be filed in Docket Number 07–148 as Document Type: REPORT, and placed in the station's Public Inspection File. This form must continue to be filed for each quarter in which a station has DTV Transition education obligations.

BILLING CODE 6712-01-P

Station Call Sign(s)

Report reflects information for quarter ending (mm/dd/yy)

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Have you opted to comply with Option One, Two, or Three (once elected, this choice may not change)?

☐ **Option One (A and D)**
☐ **Option Two (B and D)**
☐ **Option Three (C and D)**

Over the past quarter, have you fully complied with the requirements of this option?

☐ **Yes**
☐ **No**

Simulcasting

Are you simulcasting on your Analog channel and your primary Digital stream?

☐ **Yes**
☐ **No**

If YES, complete only one form for both. If NO, complete a form for your Analog channel and a second for your primary Digital stream.

<u>Call Sign</u>	Channel Numbers	Community of License											
		City	State	County									
	Analog _____	Zip Code											
	Digital _____												
Licensee													
Above, circle the Channel Number(s) to which this form applies.		Nielsen DMA	World Wide Web Home Page Address										
Facility ID Number	Previous Call Sign (if applicable)	License Renewal Expiration Date (mm/dd/yy)											
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Section A (For broadcasters electing Option One)

Stations that elect Option One must place a copy of this form on the station's public website, if such exists.

On its analog channel, and its primary digital stream, a station must air one transition PSA, and run one transition crawl, in every quarter of every day. This requirement will increase to two PSAs and crawls per quarter per day on April 1, 2008, and to three of each on October 1, 2008. Stations are required to air PSAs or crawls at various times in any given day part, and at least one PSA and one crawl per day must be run during primetime hours. On-air education must not contain inaccurate or misleading statements and must be provided in the same language as a majority of the programming carried by the station. PSAs must be at least 15 seconds, and closed-captioned. Crawls must run during programming for no fewer than 60 consecutive seconds across the bottom or top of the viewing area (See rules for additional details).

Have you aired a sufficient number of eligible PSAs (28, 56, or 84 per week, depending on the reporting period) during the correct quarters of the day?

☐

Yes

☐

No

Have you aired a sufficient number of eligible crawls (28, 56, or 84 per week, depending on the reporting period) during the correct quarters of the day?

☐

Yes

☐

No

Section B (For broadcasters electing Option Two)

On its analog channel, and its primary digital stream, a station must run an average of 16 transition-related PSAs and 16 transition-related crawls, snipes, and/or tickers per week in each quarter, all between the hours of 5 a.m. and 1 a.m. . It must also run one 30 minute DTV-related informational program once, and one 100-Day Countdown piece per day for the 100 days prior to the conclusion of the transition. Comment boxes **MUST** be used to describe these compliant activities (See rules for additional details).

Total Number of Eligible DTV Transition-Related PSAs and Crawls, Snipes, and/or Tickers (CSTs) Run -- Last Quarter

How many DTV PSAs and CSTs did your station run between 5:00 a.m. and 1:00 a.m. last quarter?

Total 5:00 a.m. to 1:00 a.m. PSAs

Total 5:00 a.m. to 1:00 a.m. CSTs

For informational purposes only, how many DTV PSAs and CSTs did your station run in the last quarter from 6:00 a.m. to 9:00 a.m.?

Total 6:00 a.m. to 9:00 a.m. PSAs

Total 6:00 a.m. to 9:00 a.m. CSTs

For stations located in the Eastern or Pacific Time Zone, how many DTV PSAs and CSTs did your station run in the last quarter from 6:00 p.m. to 11:35 p.m. (must average at least 4 per week)?

Total 6:00 p.m. to 11:35 p.m. PSAs

Total 6:00 p.m. to 11:35 p.m. CSTs

For stations located in the Central or Mountain Time Zone, how many DTV PSAs and CSTs did your station run in the last quarter from 5:00 p.m. to 10:35 p.m. (must average at least 4 per week)?

Total 5:00 p.m. to 10:35 p.m. PSAs

Total 5:00 p.m. to 10:35 p.m. CSTs

Comments (add additional sheets where necessary):

30 Minute Educational Programs – Last Quarter

How many 30 minute, DTV-related informational programs did your station run during the quarter? At least one such program must be run between the hours of 8:00 a.m. and 11:35 p.m., prior to February 17, 2009.

Total number of 30 Minute Informational Programs

Comments (add additional sheets where necessary):

100-Day Countdown Eligible Pieces – Last Quarter

Beginning on November 10, 2008, all stations participating in Option Two will engage in special 100-Day “Countdown to DTV” activities. Stations must execute a minimum of one “Countdown to DTV” on-air activity per day during the 100 days leading up to February 17, 2009. During the last quarter, how many of each eligible 100-Day “Countdown to DTV” pieces did your station run?

_____ Graphic Displays

_____ Animated Graphics

_____ Graphic and Audio Displays

_____ Longer Form Reminders

Comments (add additional sheets where necessary):

Section C (For Noncommercial broadcasters only)

On its analog channel, and its primary digital stream, a station must air 60 seconds per day of on-air consumer education, in variable timeslots, including at least 7.5 minutes per month between 6 pm and 12 am. Beginning May 1, 2008, this requirement doubles, and beginning November 1, 2008, it increases again, to 180 seconds per day and 22.5 minutes per month between 6 pm and midnight. It must also run one 30 minute transition education piece once (See rules for additional details).

Have you aired a sufficient amount of consumer education (60, 120, or 180 seconds per day, depending on the date) during each day this quarter?

☐

Yes

☐

No

30 Minute Educational Programs – Last Quarter

How many 30 minute, DTV-related informational programs did your station run during the quarter? The comment box may be used to describe this activity. At least one such program must be run between the hours of 8:00 a.m. and 11:35 p.m., prior to February 17, 2009.

Total number of 30 Minute Informational Programs

Comments (add additional sheets where necessary):

Section D (For all broadcasters)**Additional DTV On-air Initiatives – Last Quarter**

Did your station run additional on-air initiatives (such as news reports, town hall meetings, etc.) during the quarter? The comment box may be used to describe these initiatives.

☐ Yes ☐ No

Comments(add additional sheets where necessary):

Station Web Site Additional Activity Related to the DTV Transition – Last Quarter

Does your station have a Web site? ☐ Yes ☐ No

If YES, did your station provide additional DTV related information or activities on that Web site? The comment box may be used to describe what was posted on the station's Web site.

☐ Yes ☐ No

Comments(add additional sheets where necessary):

Additional DTV Outreach Efforts -- Last Quarter

Check all of the DTV related activities listed below that your station engaged in over the last quarter. The comment box may be used to describe this activity.

☐ Speaking Engagements

Comments(add additional sheets where necessary):

☐ Community Events

Comments(add additional sheets where necessary):

☐ Other (describe)

Comments(add additional sheets where necessary):

This comment box may be used to include other comments or information about your station's DTV activity over the last quarter.

Comments(add additional sheets where necessary):

STATION CERTIFICATION

I certify that the statements in this document are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name of Licensee (print):

Signature:

Date:

Appendix D: Letter from the Honorable John D. Dingell, Chairman of the Committee on Energy and Commerce, and the Honorable Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, U.S. House of Representatives [Reserved.]

Note: The full text of this Appendix, which was contained in Appendix D of the Report and Order (FCC 08–56), can be obtained as described in the beginning of the Supplementary Information, above. It is also available on the FCC's Web site at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-56A7.pdf.

Appendix E: Reply from the Honorable Kevin J. Martin, Chairman, Federal Communications Commission [Reserved.]

Note: The full text of this Appendix, which was contained in Appendix E of the Report and Order (FCC 08–56), can be obtained as described in the beginning of the Supplementary Information, above. It is also available on the FCC's Web site at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-56A8.pdf.

[FR Doc. E8–5409 Filed 3–21–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XG59

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Vessels in the Bering Sea and Aleutian Islands Trawl Limited Access Fishery in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch for vessels participating in the Bering Sea and Aleutian Islands (BSAI) trawl limited access fishery in the Eastern Aleutian District of the BSAI. This action is necessary to prevent exceeding the 2008 Pacific ocean perch allowable catch (TAC) specified for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 19, 2008, through 1200 hrs, A.l.t., September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Pacific ocean perch TAC allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI is 214 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 Pacific ocean perch TAC allocated to vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI will soon be reached. Consequently, NMFS is

prohibiting directed fishing for Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 18, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.91 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 19, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1066 Filed 3–19–08; 1:57pm]

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