

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

In the Matter of)
)
DTV Consumer Education Initiative)

MB Docket No. 07-148

COMMENTS OF THE



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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and consumer electronics manufacturers. In particular, cable operators and other MVPDs are required to provide monthly notices about the digital transition in their customers' bills, starting April 30, 2008 through March 2009.

Following this decision, the Commission released a Further Notice of Proposed Rulemaking in this proceeding seeking to extend federal consumer education mandates by asking whether MVPDs should also be *required* to provide "on-air DTV education on their systems." While recognizing cable's already substantial \$200 million DTV consumer education and public service campaign to inform cable customers and many non-cable customers about the broadcasters' transition to digital, the Commission nonetheless seeks to impose further rules targeting people with sets connected to cable, a population that will largely need to take no action – and who are already receiving extensive voluntary public service announcements (PSAs) from cable operators, programmers and other media.

Indeed, *Get Ready for Digital TV*, is an 18-month multimedia consumer education campaign launched by the cable industry almost ten months ago and coordinated with the voluntary efforts of the DTV Transition Coalition, a consortium of the broadcast, cable, satellite and consumer electronics industries, as well as a variety of consumer and public interest groups, to ensure consistent messages to the American public. While cable operators today already provide digital programming to cable households, the industry stepped up early-on to use its resources to inform cable customers and many non-cable viewers about the broadcasters' transition to digital television and how to ensure continued service to analog television sets after the transition.

The industry has kept its promise. Since September 2007, cable operators and programmers have aired PSAs about the digital transition in commercial airtime valued at almost

\$94 million of their \$200 million commitment. This does not include the host of other cable-initiated consumer outreach activities, ranging from “how to” guides to websites to on-demand and local origination programming to community-sponsored events related to the DTV transition.

Assuming (while not conceding) that the Commission has the authority to impose national PSA regulation on cable operators, any such national standards and requirements could be counterproductive given the unique, local nature of the transition. For example, some broadcast stations, as permitted under the Commission’s rules, may cease analog broadcasting ahead of the February 2009 transition date or take other actions affecting the switchover from analog to digital broadcasting at the local level. The mandatory monthly bill notices and other rules ensure a consistent, national message across industries, but cable operators need the flexibility as the transition gets closer to determine how best to fashion their customer messages based on such factors as the individual market, region, demographics or even the level of over-the-air sets in the homes of the communities they serve. As we show below, cable companies are, in fact, developing their own PSAs and other means to reach their customers about the transition.

Furthermore, the evidence shows that existing consumer education initiatives have already had a strong impact. Two studies found that the overwhelming majority of American consumers surveyed (84% in one survey and 90% in a second survey), are aware of the transition and another study showed a high state of readiness or near readiness for the transition (*i.e.*, over 90% of U.S. households are at least “partially ready” and 78.0% are “completely ready” for the transition). Research also shows that cable customers are among those with the highest level of awareness about the DTV transition.

Under the above circumstances, there is no policy basis for the Commission to impose mandatory federal rules on the provision of national public service announcements by cable operators. Especially in light of the cable industry's extensive voluntary initiative, NCTA does not believe that further federal regulation of the information that cable operators communicate to their customers, such as mandatory PSAs, is warranted or necessary.

DISCUSSION

I. THE CABLE INDUSTRY IS CURRENTLY ENGAGED IN A COMPREHENSIVE PUBLIC SERVICE AD CAMPAIGN THAT WILL CONTINUE THROUGH MARCH 2009

As the Commission acknowledged in the Further Notice, the cable industry is “already engaged in a ‘\$200 million digital TV transition consumer education campaign, highlighted by English and Spanish language television commercials.’”² In fact, as NCTA reported to the Commission last April,³ for the period September 2007 through January 2008, NCTA member companies reported airing PSAs about the broadcasters’ transition to digital in commercial airtime valued at more than \$25 million. As of April 30, 2008, cable companies – both operators and programmers – had run ad spots valued at almost \$94 million and expended substantial sums on other marketing activities, such as radio spots, print and online media.⁴ Cable companies will not only keep pace with their overall \$200 million commitment through the rest of 2008 and early 2009 but will likely exceed their individual commitments as the transition gets closer.

² Further Notice at ¶ 19. *See also* NCTA News Release, Sept. 26, 2007.

³ *See In the Matter of DTV Consumer Education Initiative*, Report from National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 07-148, Apr. 10, 2008 (“DTV.gov partner quarterly report”).

⁴ The Cable and Telecommunications Association for Marketing (CTAM) surveys cable companies monthly to request reporting data on the number of times that PSAs on the digital transition have run and the commensurate commercial value of that time.

To date, NCTA has distributed seven 30-second national PSAs to its member cable operators and programming networks along with media plans for their use. Two 15-second PSAs are also available to programming networks. As noted above, in an effort to reach a wider audience, several of these spots, which were made in consultation with other members of the DTV Transition Coalition, are available in both English and Spanish language versions. NCTA also has encouraged its member companies to create their own PSAs appropriate for their individual audiences and customer demographics. Several multiple system operators, such as Cox, Cablevision and Suddenlink, have produced their own DTV ads.

In addition to PSAs, the cable industry undertook a multi-faceted DTV consumer outreach program to help facilitate a smooth transition for cable customers and many non-cable customers. As discussed below, the campaign includes a variety of activities, such as DTV “what you need to know” guides and related consumer materials and resources; brochures, websites, local programming, system-originated messaging and other communications with the public. NCTA also has been a leader in inter-industry consumer education efforts and has promoted appropriate messaging and consumer outreach among cable-specific organizations.

II. THE CABLE INDUSTRY’S DTV CONSUMER EDUCATION COMMITMENT EXTENDS BEYOND PSAs TO INCLUDE OTHER BROAD-BASED INITIATIVES

In addition to voluntarily providing public service announcements, the cable industry is currently providing the mandatory monthly bill notices to all customers, as well as a wide range of public outreach and marketing activities aimed at educating American consumers about the broadcasters’ DTV transition.

Monthly Notices in Customers' Bills

As noted above, pursuant to the Commission's recently-adopted DTV Consumer Education rules, cable operators, along with other MVPDs, began providing their subscribers with notices about the transition from analog to digital broadcasting in the monthly bills or bill notices received by subscribers starting April 30, 2008.⁵ The monthly notices are inserted in all customer bills, both paper and electronic, and will continue to be provided on a monthly basis through March 2009.

NCTA had already developed a template for customer "bill stuffers" pursuant to the industry's consumer education initiative announced last fall and it has subsequently revised both the long and short-form versions of the bill inserts consistent with the Commission's new rules.⁶ In addition to alerting customers about the coming end of analog broadcasting and converter box equipment that may be needed for analog sets not connected to cable service, the notices provide information on government and cable company websites and toll-free telephone numbers where consumers may obtain information about the transition and the digital-to-analog converter box program.

Internet DTV Education Content

As part of its voluntary efforts, the cable industry also created web content in both English and Spanish to educate cable consumers about the transition. The two new websites, www.GetReadyForDigitalTV.com and www.prepareparatvdigital.com, were launched in September 2007. The websites explain in clear, concise language the reasons for the transition,

⁵ See *In the Matter of DTV Consumer Education Initiative*, Report and Order, MB Docket No. 07-148, rel. March 3, 2008; at ¶¶ 38 - 45; 47 C.F.R. § 76.1630.

⁶ See NCTA brochure/bill stuffer material at http://i.ncta.com/ncta_com/DTV/IndustryToolkit/DTVlongbrochure.pdf and http://i.ncta.com/ncta_com/DTV/IndustryToolkit/DTVlongbrochureSPANISH.pdf (long version); http://i.ncta.com/ncta_com/DTV/IndustryToolkit/DTVshortbrochure.pdf and http://i.ncta.com/ncta_com/DTV/IndustryToolkit/DTVshortbrochureSPANISH.pdf (short version).

its benefits, and provide consumers with useful information to help them prepare for the transition should they need to take action. They also include an extensive list of sources of additional information including links to the NTIA and FCC websites. Since their launch, the websites have received more than 35,000 unique visitors who have viewed more than 90,600 pages.

In addition, NCTA revamped its own website, www.ncta.com, to become a primary portal to a vast array of consumer education information about the transition. The NCTA site was reconfigured to prominently feature links to websites from the FCC, NTIA, the TV Converter Box Coupon Program, and the DTV Transition Coalition. Direct links to the NCTA microsites identified above further provide users easy access to additional informational websites from the National Association of Broadcasters, the Consumer Electronics Association, and AARP.

DTV Transition Communications “Toolkit”

Last fall, NCTA developed a “communications toolkit” to assist its member companies communicate with their customers about the digital television transition. The “toolkit” was initially distributed in December 2007, and has been updated and redistributed several times since then. The toolkit contains a variety of template communications materials such as long- and short-form brochures and “bill stuffers”; messages designed for digital cable boxes, on-screen scrolls and telephone on-hold announcements; and informational resources for cable customer contact personnel. The web-based toolkit also enables users to view NCTA’s PSAs, and an informational video produced by the Consumer Electronics Association (CEA).⁷

⁷ See www.ncta.com/dtvtransitionindustrytoolkit.

On-Demand and Local Origination Programming and Company-Sponsored Initiatives

One of the main components of the toolkit is a nine-minute video tutorial produced by CEA, “DTV 101: A Consumer’s Guide to Digital Television,” which has been used by many cable systems on an on-demand or local origination programming basis to educate their customers. In the Time Warner Wisconsin division, the CEA tutorial program was the highest rated show on “Wisconsin on Demand” for three weeks in a row.

NCTA is currently working with the Cable & Telecommunications Association for Marketing (CTAM) to create additional programming suitable for use in cable local origination and on-demand services. This programming should be completed in time for distribution no later than the third quarter of 2008.

These NCTA and CTAM-driven initiatives are just the tip of the iceberg. Cable companies are doing a variety of other educational and marketing activities. For example, as part of its multi-pronged DTV transition campaign, Comcast’s local systems plan to do customer e-blasts, direct mail, door-to-door flyers, web content, print ads and community events. Time Warner’s operations nationwide are similarly committed to preparing customers for the transition. Time Warner’s Wisconsin division, for example, has incorporated DTV education into virtually every community event in which they participate this year. The system recently sponsored the local Seniorfest, speaking to more than 3,000 seniors about the transition. Time Warner Cable “street teams” will also be out in force at summer festivals distributing DTV educational materials.

In Wilmington, North Carolina, where the DTV transition will occur months before the rest of the country, Time Warner Cable is actively educating local viewers through such activities as a Wilmington DTV transition-specific website, Wilmington-specific PSAs,

informational crawls on the Weather Channel and local channels, newspaper ads, radio spots (in English and Spanish), bill inserts and brochures, and outreach to local officials, the Hispanic, African-American, and senior communities.

Among an array of DTV-related activities, Cox is producing and airing programs and programming segments on local Cox Communications Channels, along with on-demand spots and informational programs.

Suddenlink and Insight are doing e-newsletters and blogs about the DTV transition. Cox, Mediacom and many other cable companies have spoken at city council meetings and done presentations before organizations, businesses and community groups. And all MSOs continue to train front-line employees on communicating with customers about the transition.

DTV Transition Coalition and Other Cable Industry Organization Initiatives

In addition to cable-centric initiatives, NCTA is a founding member and leader of the DTV Transition Coalition, a consortium of the broadcast, cable, satellite and consumer electronics industries, as well as a variety of consumer and public interest groups, whose goal is to ensure that American consumers are as informed and prepared as possible for the transition to digital broadcasting. NCTA has been actively engaged in the Coalition's activities, which began over a year ago, in an effort to ensure consistency of consumer messaging and communications planning across industry groups.⁸

⁸ NCTA has participated in Capitol Hill briefings for staffers of the U.S. House of Representatives (in October 2007) and the U.S. Senate (in February 2008). Representatives of NCTA and CTAM regularly attend and participate in meetings of the full DTV Coalition and meetings and conference calls of the Steering Committee of the DTV Transition Coalition. NCTA participated in the design, launch, and updating of the Coalition's website, www.dtvtransition.org. The association has helped plan and launch Coalition outreach activities; assisted in authoring various brochures, communications pieces, and frequently-asked-question documents for distribution to Coalition member groups; and joined other partners in the Coalition in a wide variety of public policy conferences in Washington, DC, and around the country. In addition, NCTA has exhibited its DTV education materials in a number of government-sponsored consumer education forums, including the NTIA DTV Transition Expo on September 25, 2007, and the DTV Consumer Education Workshops at the Federal

In partnership with NCTA and cable companies, other cable organizations are focusing substantial resources on consumer education, including instituting their own DTV-related activities and initiatives to educate cable customers.

As noted above, NCTA has worked closely with its partner organization, CTAM, to help educate cable marketers about the transition, and to recommend messaging for use in cable marketing initiatives designed to educate consumers about the transition.⁹ NCTA participated in a nationally-distributed teleseminar sponsored by CTAM to address marketing-related issues for cable companies. Furthermore, CTAM has initiated a series of informational interviews on radio stations around the country to provide direct information to consumers about their options in the course of the transition. And, as discussed in the next section, CTAM tracks DTV awareness among cable customers on a quarterly basis.

The Association of Cable Communicators has, among other things, developed recommendations to help cable communications executives better communicate the DTV transition to their various constituencies, including community and civic leaders, and cable customers. NCTA staff regularly brief the Cable Center's Cable Customer Service Committee (based in Denver, Colorado), which is comprised of senior cable customer care executives from the industry's leading multiple system operators, on the anticipated impact of the DTV transition on cable customer care processes and facilities.

The cable industry's education foundation, Cable in the Classroom (CIC) created and distributed a brochure for school administrators and teachers to help them navigate the digital transition for television sets located in school buildings. CIC also has added information to its

Communications Commission on September 26 and December 4, 2007, and January 31, February 28, and April 1, 2008.

⁹ NCTA participates in the CTAM DTV Transition Advisory Committee, which is comprised of top marketing executives from cable operators and programmers, and meets periodically to discuss the transition.

website, www.ciconline.org, to help schools better understand the implications of the DTV transition.¹⁰

Finally, NCTA continues to participate in numerous educational panels at cable industry meetings and conferences around the country. These appearances include presentations to cable associations and organizations in California, the District of Columbia, Florida, Georgia, Maryland, Massachusetts, Michigan, Missouri, New York, Ohio, Pennsylvania, Texas, and Virginia. The association has also worked with a variety of consumer groups, minority and grassroots organizations to help get the word out to their varied memberships and constituencies through media and other forms of communication.

III. GIVEN THE SUBSTANTIAL DTV CONSUMER EDUCATION EFFORTS ALREADY UNDERWAY AND THE EVIDENCE OF INCREASED AWARENESS AMONG THE AMERICAN PUBLIC, THERE IS NO RATIONALE FOR FURTHER DTV EDUCATION MANDATES

Despite the broad array of DTV consumer education activities already underway, which will only accelerate as the transition date draws near, the Further Notice proposes to mandate further public service announcements for cable and other MVPDs. Apart from whether the Commission has the legal and jurisdictional authority to adopt such mandates,¹¹ such action is unnecessary and unwarranted as a policy matter. All of the evidence shows that consumer awareness has risen dramatically over the past six months and that trend is likely to continue as the various industries further ramp up DTV messaging through both mandatory and voluntary

¹⁰ The industry's chief technical executives and local engineers are also working constructively with broadcast organizations and local broadcast stations to help ensure that cable viewers do not experience disruption on or after February 17, 2009.

¹¹ The Commission's proposal to impose mandatory PSAs on cable and other MVPDs may not be legally sustainable. There is no direct authority for such rules in the relevant statute, Communications Act, 47 U.S.C. Section 309, so the Commission would have to turn to its ancillary jurisdiction which may not be sustained. Compelling cable operators and other video providers to run mandatory PSAs about the over-the-air broadcasters' transition to digital also may be unconstitutional under the First Amendment. *See e.g., Wooley v. Maynard*, 430 U.S. 705, 714 (1977); *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986).

commitments. With respect to cable, the almost \$94 million worth of public service announcements that have run since September 2007 is stark evidence of the cable industry efforts to spread the word to its customers. This effort, combined with monthly bill stuffer notices that are going out through March 2009, and the array of other marketing and public relations activities at the corporate and local level, will more than meet and likely exceed the industry's \$200 million commitment.

In these circumstances, further federal regulation of the messages that cable operators communicate to their customers is likely to do more harm than good. Cable systems are best suited at the local level to design and execute appropriate messaging for their customers. They need the flexibility to tailor their messaging to respond to market and regional differences, demographics, and other factors. And in light of the fact that markets such as Wilmington, North Carolina and other test markets and communities will have broadcast stations that cease analog broadcasting ahead of the February 2009 transition date, as permitted under the DTV rules,¹² cable operators will need to be able to develop the right messages and information about the transition for their customers.

This is evident in that even with nationally-produced NCTA ad spots, some cable companies have already developed their own PSAs and related consumer education material targeted to their specific communities.

Moreover, the Commission should find reassurance in the fact that cable operators will be airing all of the DTV public service announcements of the broadcast stations carried on their systems. Thus, cable customers, who will need to take no action at all to ensure that their sets connected to cable receive DTV signals, will nonetheless get the messages from the most critical

¹² See *In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, MB Docket No. 07-91, rel. Dec. 31, 2007.

source in the transition – the broadcast stations that will be converting to digital in February 2009.

Finally, the evidence shows that there is simply no rationale for further federal mandates on cable regarding educating cable customers about the conversion from analog to digital broadcasting. As we have pointed out, cable customers are unaffected by the broadcasters' DTV transition for sets connected to cable. Moreover, existing consumer education initiatives have already significantly raised public awareness and readiness for the transition among all populations, cable and non-cable viewers. According to a recent study by Leichtman Research Group, 84% of all adults had heard of the digital transition, nearly double the rate from six months earlier.¹³ Similarly, a recent Nielsen Company study on digital readiness found that as of April 30, 2008 over 90% of U.S. households are at least partially ready for the transition to digital, with 78.0% of households identified as “completely ready.”¹⁴ And, as Nielsen pointed out, the situation is sure to get even better in upcoming months: “it is imperative to note that as we get closer to the DTV Transition date, households will upgrade their television equipment at an accelerated rate. Therefore, this analysis does not suggest that viewing in February 2009 will be impacted to the same degree as it would be if the transition occurred today.”¹⁵

¹³ “Leichtman Research Poll Finds People Are Generally Aware But Fuzzy on Specifics”, Multichannel News, June 10, 2008, citing LRG study, “Cable, DBS & Telcos: Competing for Customers 2008.”

¹⁴ “The February 2009 Digital Television Transition: Overview of the Digital Readiness of U.S. Households and Analysis of Viewing to Unready Sets,” Nielsen Company, June 17, 2008 at 3. Completely Ready household is defined as a household that has all ready sets (*i.e.*, a set connected to cable, satellite or digital converter box or has an internal digital tuner. Partially Unready household is one that has at least one ready set and at least one unready set.

¹⁵ *Id.* at 2.

A national survey recently sponsored by the National Association Broadcasters confirms this accelerating trend. It found that 90% of respondents were aware of the transition (in June 2008) as compared to an awareness level of 83% in January 2008.¹⁶

As we reported in April, CTAM conducted a nationwide survey of consumers regarding their knowledge of the DTV transition, level of preparedness, and other issues of concern to consumers about the transition.¹⁷ The survey demonstrated rising levels of awareness by the end of 2007 but still showed a substantial gap to close to achieve near 100 percent awareness. In particular, the survey indicated that groups of consumers with the highest levels of awareness included broadband subscribers, digital cable subscribers, and subscribers to basic cable services; while the lowest levels of awareness appeared to be among consumers living in households served only by over-the-air broadcasting.

The CTAM survey helped cable industry public affairs and marketing executives better understand how to target consumer education outreach efforts. And those and other educational efforts bore fruit. According to CTAM's most recent study, a national poll conducted between February 21, 2008 and March 31, 2008, awareness of the digital transition and familiarity with the transition concept has increased dramatically between November 2007 and now.¹⁸ The level of awareness of the digital transition went from 49% in November 2007 to 75% as of March 2008. Such results, CTAM concluded, are "undoubtedly due to press coverage of the one-year

¹⁶ "New National Poll Shows Near-Universal Awareness of DTV: Ninety percent of Americans know about February 17, 2009 switch to digital television," National Association of Broadcasters Press Release, June 16, 2008.

¹⁷ See CTAM News Release regarding PULSE study at <http://www.ctam.com/news/releases/071210.htm>. For the full study, see <http://www.ctam.com/news/pulse111207.pdf>.

¹⁸ CTAM Digital Transition Tracking Study, first quarterly report, Field Period: February 21, 2008 to March 31, 2008.

countdown to the digital transition and PSAs regarding the digital transition that have been broadcast since the beginning of 2008.”¹⁹

CTAM will continue original research this year to track the levels of awareness and most of the major cable MSOs are conducting research among consumers within their service areas as well.

In sum, all indicators show high levels of consumer awareness at this stage of the transition, particularly in homes served by cable, and that industry-wide mandatory and voluntary efforts should continue to bring consumer awareness and preparedness to a near universal level. The level of awareness may lag to some extent in over-the-air households, but this population will not benefit from cable PSAs. The best way to reach over-the-air viewers is through broadcast- originated PSAs. There is no reason, therefore, for the government to impose federal on-air public service announcement rules on cable.

¹⁹ CTAM Study at 5.

CONCLUSION

The cable industry has promoted the DTV transition by aggressively deploying a consumer education campaign valued at more than \$200 million to help American consumers understand their options before and during the broadcasters' conversion to digital in February 2009.

Cable will continue to take steps to promote the transition, including PSAs and other initiatives through the time of the transition, educate and train its workforce to manage consumer questions, and partner with government, industry and consumer groups to spread the word about the transition. The Commission should accord cable operators the flexibility to design messages to most effectively meet the needs of their customers.

Respectfully submitted,

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