

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

In the Matter of	)	
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	)	
DTV Consumer Education Initiative	)	MB Docket No. 07-148
	)	(FCC 07-128)
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	)	
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**Comments of the  
BENTON FOUNDATION**

September 17, 2007

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## **I. INTRODUCTION: PUBLIC INTEREST OBLIGATIONS ARE NEEDED FOR A SUCCESSFUL DTV TRANSITION**

Pursuant to the Notice of Proposed Rulemaking (“NPRM”) adopted by the Commission on July 21, 2007 seeking comments on several proposals relating to consumer education about the digital television (“DTV”) transition,<sup>1</sup> the Benton Foundation<sup>2</sup> (“Benton”) hereby submits these comments.

In reports to Congress,<sup>3</sup> the Commission has outlined a three-prong effort to advance the DTV transition and promote consumer awareness: 1) get the “right rules” in place to facilitate a smooth transition, 2) enforce those “right rules” to protect consumers, and 3) promote awareness of the transition through consumer education and outreach efforts.

Benton recommends that these three prongs not function as silos, but as interrelated

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<sup>1</sup> In this NPRM, the Commission seeks comment on whether there are additional steps which the Commission can and should take to make consumers aware of the hard deadline of February 17, 2009 for the end of full-power analog broadcasting. Specifically, the Commission is responding to a letter from Congressional leaders asking if the Commission should adopt rules requiring A) television broadcasters to air public service announcements, B) broadcast licensees to report their consumer education efforts, C) multichannel video programming distributors (MVPDs) to insert periodic notices in customer bills that inform consumers about the digital television transition and future viewing options, D) manufacturers to include information about the transition with television receivers and related devices, E) retailers who participate in the converter box coupon program to detail their employee training and consumer information plans, F) partners identified on the Commission’s digital television Web site to report their specific consumer outreach efforts, and G) additional proposals mentioned in the Letter including broadcaster public file requirements or other public announcements, notice requirements by telecommunications carriers that receive funds under the Low Income Federal universal service program, or reporting requirements by 700 MHz auction winners.

<sup>2</sup> The mission of the Benton Foundation is to articulate a public interest vision for the digital age and to demonstrate the value of communications for solving social problems. The foundation is a long-time advocate of defining the public interest obligations of digital broadcasters. Benton Foundation Chairman Charles Benton served on the Presidential Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters and currently serves on the Commission’s Consumer Advisory Committee.

<sup>3</sup> See letter from Chairman Kevin Martin to Honorable John Dingell, Chairman of the House Committee on Energy and Commerce, and the Honorable Edward Markey, Chairman of the House Subcommittee on Telecommunications and the Internet June 18, 2007 (“Martin Response Letter”) ([http://energycommerce.house.gov/Press\\_110/FCC%20response%20DTV%20ed%20plan%2006%2020%2007.pdf](http://energycommerce.house.gov/Press_110/FCC%20response%20DTV%20ed%20plan%2006%2020%2007.pdf)) and written statement of Catherine Seidel, Chief of the Commission’s Consumer and Governmental Affairs Bureau before the Senate Committee on Commerce, Science & Technology July 26, 2007 (“Seidel Testimony”) ([http://commerce.senate.gov/public/\\_files/WrittenStatementofCathySeidel7262007Hearing.pdf](http://commerce.senate.gov/public/_files/WrittenStatementofCathySeidel7262007Hearing.pdf)).

efforts. The Commission's goal is simply put: Leave No Viewer Behind. Consumers must be made aware of more than the February 2009 deadline and the options available to them to continue broadcast television viewing: consumers must also be aware that the "right rules" are in place so that they benefit from the DTV transition. Moreover, outreach and educational efforts must be interactive; consumers know best how television serves their needs. The Commission should be listening to consumers now to ensure that the "right rules" are in place to ensure America's television broadcasting system is at least as vibrant as it is before the transition and, hopefully, more so. And, as with all regulation, the "right rules" are meaningless if not properly enforced. The Commission must remain vigilant in enforcing rules so that consumers are aware of their rights and protected from unscrupulous vendors, access by people with disabilities is ensured, and the transition has a positive impact on consumers.

The NPRM calls for comment on "other initiatives that the Commission can and should undertake to educate the public on the DTV transition."<sup>4</sup> Benton points out that although the transition to DTV is mainly a technological change, it is the content delivered via broadcast television that is of the utmost importance to viewing communities. The transition will not benefit viewers unless it delivers the essential programming – educational/informational shows for children, local news and public affairs, and public safety information in accessible formats for people with disabilities – viewers have come to rely upon. Under consideration for over 12 years, the public interest obligations of digital television broadcasters are the most vital unfinished business of the Commission.

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<sup>4</sup> NPRM at 17.

Benton reiterates that part of the mix of “right rules” must be defining the public interest obligations of digital television broadcasters.<sup>5</sup> With less than 520 days before the completion of the transition to all-digital television broadcasting in the U.S., the American public deserves to know how television broadcasters will fulfill their role as public trustees of the airways in the digital age. Benton therefore urges the Commission to issue clear guidelines to ensure that digital television broadcasters adhere to the law and serve the local educational, informational, civic, minority, disability, and public security needs of the children and adults in the communities that TV stations are licensed to serve.

## **II. THE CHALLENGE BEFORE THE NATION IS DAUNTING**

Never in the history of American broadcasting have we faced such a monumental task. Television has never played a more important role in our lives. It is our primary source of news and entertainment<sup>6</sup> and emergency alerts.<sup>7</sup> But digital television signals are not compatible with analog TV sets in most American homes. These sets will go dark on February 18, 2009. In order for the DTV transition to be successful, consumers must be well-informed and primed to adapt successfully to the new technology. This cannot occur unless there is a comprehensive, coordinated and robust national consumer outreach

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<sup>5</sup> See Attachment A: Benton et al comments in the matter of the Commission’s Third Period Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07-91)

<sup>6</sup> Horrigan, J., Garret, K., & Resnick, P. (2004). *The Internet and Democratic Debate*. Pew Internet and American Life Project and the University of Michigan School of Information; Cooper, M. (n.d.). *Media Ownership and Democracy in the Digital Information Age*. Center for Internet & Society, 146. Stanford Law School; Carter, S., Fico, F., & McCabe, J. (2002). *Partisan and Structural Balance in Local Television Election Coverage*. *Journalism and Mass Communications Quarterly*, 79. p.42; Norris, P. (2002). *Revolution, What Revolution? The Internet and U.S. Elections, 1992-2000*.

<sup>7</sup> See, for example, Second Report and Order in the Matter of Review of the Emergency Alert System (EB Docket No. 04-296) at 17. Adopted May 31, 2007.

effort.

Benton sees four great obstacles to a successful transition:

- **Most Americans Have Not Made The Transition To Digital TV Technology:**

By the end of 2007, perhaps just over one-third of these households may have a digital television<sup>8</sup> and, there are concerns that even today's cable TV subscribers are at some risk of losing broadcast TV service on one or all of their televisions at the end of the DTV transition.<sup>9</sup>

- **Americans Remain Unaware Of The Transition To Digital Television:** Over 60% of Americans remain unaware of the DTV transition.<sup>10</sup>

- **At-Risk Consumers Are Also Hardest To Reach:** The consumers most at risk of losing TV service after the transition<sup>11</sup> -- low-income households, foreign-

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<sup>8</sup> Arnold, Thomas K. "DEG: 52 mil HDTV homes in U.S. by '08." The Hollywood Reporter. July 18, 2007. (see [http://www.hollywoodreporter.com/hr/content\\_display/television/news/e3i46597294f152ad2d311c94d12d48670b](http://www.hollywoodreporter.com/hr/content_display/television/news/e3i46597294f152ad2d311c94d12d48670b)) On July 18, 2007, the Consumer Electronics Association reported that more than 30 million U.S. households have at least one high definition, digital television ("HDTV"). An estimated 4.5 million HDTVs were sold in the first half of 2007, 50% more than in the first six months of 2006. CEA projects that 16 million HDTVs will be sold by the end of this year, bringing the U.S. household total to more than 52 million. That could bring the household penetration rate to 36%, with about 20% of homes having more than one HDTV.

<sup>9</sup> In May 2007, Leichtman Research Group, Inc. released findings that 23% of all TV sets in consumers' homes do not receive cable or Direct Broadcast Satellite (DBS) programming. This represents over 70 million TV sets in US households that only receive over-the-air broadcast television. Half of all broadcast-only TV sets are in 15% of primary households nationwide that do not subscribe to cable, DBS, or any other type of multi-channel video service. The other half are in households that subscribe to cable or DBS. Nine percent of TV sets in cable households are broadcast-only, and 19% of TV sets in DBS households are broadcast-only. Other related key Leichtman Research findings include: 1) 70% of all TV sets in cable households are not connected to a set-top box and 2) 42% of households that subscribe to cable TV do not have any cable set-top boxes.

<sup>10</sup> "APTS Survey Finds Majority of Americans Remain Unaware of DTV Transition." Association of Public Television Stations. January 31, 2007. (see <http://www.aps.org/news/DTVSURVEY.cfm>). Note, however, that the 22 million estimate does not include Puerto Rico and other U.S. territories.

<sup>11</sup> The Government Accountability Office (GAO) found that 19% or 20.8 million households rely exclusively on free over-the-air television. Statement of Mark L. Goldstein, United States Government Accountability Office, Testimony Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, at 7 (Feb. 17, 2005)

language speakers, older Americans<sup>12</sup> -- are the most vulnerable in our communities and the hardest to reach

- **People With Disabilities May Lose Broadcast TV, Even if They Adopt DTV**

**Technology:** Numerous problems receiving and/or viewing closed captioning on some digital television programming already have been documented.

### **III. THE COMMISSION IS THE LEAD AGENCY IN THE DTV TRANSITION**

The success of the DTV transition is 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. The Commission, as recognized in the NPRM, should take whatever steps it can to promote a comprehensive, coordinated, effective, national consumer education campaign that includes both information about the transition taking place and steps to ensure that people with disabilities will not lose access once the transition occurs.

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<sup>12</sup> Additionally, see "APTS Study Shows Older Americans Less Prepared for the Digital TV Transition." Association of Public Television Stations. July 2007. Many older Americans are at risk of being left behind in the transition. On July 24, 2007, the Association of Public Television Stations (APTS) released survey results finding that older Americans are more likely to rely on over-the-air television service and are thus less prepared for the switch-off of analog signals in February 2009. According to the APTS findings, 24 percent of households with people 65 and older receive their TV programming over-the-air, while only 19 percent of younger households depend on over-the-air signals. The study also found that only 17% of those older Americans relying solely on over-the-air broadcasts own a digital TV, which means the rest will need to buy a digital-to-analog converter box or subscribe to cable or satellite service to continue to enjoy television programming. The study, which APTS says is the first time it has studied the impact of the digital transition on a specific population segment, also found that only 41% of Americans 65 and older had purchased a new TV set in the past three years, compared to 55 percent of Americans younger than 65. According to APTS, that suggests that older Americans may not be as exposed to "DTV transition messaging from electronics retailers" as younger Americans, since they are spending less time in retail outlets shopping for new TV sets. (<http://www.aptv.org/news/olderamericansotastudy.cfm>)

Recognizing that the Commission mandated the transition to DTV broadcasting at the behest of broadcasters,<sup>13</sup> it is the Commission's responsibility to take the lead in ensuring that consumers across the country are aware of and benefit from the transition and, in the case of people with disabilities, do not lose the captioning access to which they have become accustomed after it occurs. In their letter, Chairmen Dingell and Markey noted that the Commission is the lead agency for the DTV transition and consumer education, and as such, has important responsibilities.<sup>14</sup> The Commission has been considering the matter of advanced television systems and their impact upon the existing television broadcast service since 1987<sup>15</sup> and for 20 years has been considering and adopting rules changes to make the DTV transition possible.<sup>16</sup> Only since last year has the NTIA been given a formal role in the transition.<sup>17</sup> Moreover, the NTIA does not have the authority needed to adopt enforceable rules as part of a coordinated, national DTV consumer education campaign.

The Commission should immediately appoint one or more commissioners to lead the DTV education effort in coordination with the Consumer and Governmental Affairs Bureau and other government agencies including the NTIA. The commissioners and staff should make as many public appearances, including media appearances such as daytime talk shows, as practical to discuss the DTV transition.

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<sup>13</sup> Brinkley, Joel. *Defining Vision: How Broadcasters Lured the Government into Inciting a Revolution in Television*. Harvest Books. 1998 and Snider, J.H. *Speak Softly and Carry A Big Stick: How Local TV Broadcasters Exert Political Power* iUniverse, Inc. .April 23, 2005.

<sup>14</sup> Letter at page 2.

<sup>15</sup> MM Docket No. 87-268

<sup>16</sup> This includes various sets of regulations to ensure that users of closed captions continue to have access to television programming after the digital transition takes place (will provide cites).

<sup>17</sup> Deficit Reduction Act of 2005, Public Law 109-171, Sec 3005©(2)(A), February 8, 2006.

The Commission's plan should: 1) identify the households most likely to be at risk of losing TV service; 2) concentrate and leverage its limited resources on reaching these households; 3) work with partners on crafting and disseminating the right message to motivate these households to take necessary action to ensure continued television service; and 4) ensure that consumers benefit from the transition. As in all broadcasting matters, the Commission must recognize the law: "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of the market," and thus, *it is " the right of the viewers and listeners, not the right of the broadcasters, which is paramount."*<sup>18</sup>  
[emphasis added]

The Commission should collect data immediately that reveals the demographics of these at-risk groups. This data collection should be ongoing so the FCC and NTIA know who is being reached and who's already taken steps to make the transition. With that data, the Commission can then ascertain the special communication needs of these groups.

In his letter to Chairmen Dingell and Markey, Chairman Martin indicated that the Commission will "consider surveying consumers about their awareness of and the steps they must take to prepare for the transition" if the Commission's fiscal year 2008 budget request is approved by Congress. The Commission should commit to ongoing data collection and to immediately reach out to industry players and others to see if the data already exists and can be shared. If not, the Commission should request the Census Bureau of the Department of Commerce to collect this data. The Commission should be

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<sup>18</sup> *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

an active participant in writing the Bureau's questions.

Benton recommends that the Commission's education plan include the following components at a minimum:

**A. THE COMMISSION SHOULD REQUIRE ALL BROADCASTERS TO AIR PUBLIC SERVICE ANNOUNCEMENTS**

The DTV education campaign must reach households that currently rely on the over-the-air signals of full-power television stations. This is the group most at-risk of losing television service in February 2009.<sup>19</sup> In addition, the Commission should act quickly to determine how analog cable subscribers who do not rent or own set-top boxes will be impacted by the DTV transition. Are they also at risk of losing their access to broadcast TV channels after the transition? Benton asks that the Commission coordinate a finding that includes broadcasters, cable operators, consumer electronics manufacturers and retailers for a definitive answer on this question.

Obviously, the one thing all at-risk groups will have in common is their current use of television. To reach these groups, the DTV education campaign must be primarily conducted through TV. The Commission is proposing requiring television licensees to conduct on-air consumer education efforts through public service announcements ("PSAs"). Benton endorses this proposal.

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<sup>19</sup> Although all Americans need to get the message about the transition, given the limited resources for outreach, the message needs to be targeted at the populations most at risk of losing TV.

The need for the requirement of PSAs goes to the competing business interests of broadcasters. Granted, television stations need viewers to make the transition to DTV so that they can retain the audiences they sell to advertisers. This is a great motivator for broadcasters to reach out to every household to ensure all viewers make the transition. Many stations are likely to air PSAs to make sure consumers are aware of the transition. And broadcasters and others may argue that their voluntary efforts will ensure viewers are aware of the transition and what their future viewing options are. However, during much of the time when this message is to be delivered – 2008 – the nation will be in the midst of federal elections including a presidential election. Television ad inventory will be at a premium.<sup>20</sup> Some broadcasters may not voluntarily make enough free PSA time available to reach the desired audience when candidates and other advertisers are trying to buy that time. Moreover, even where PSAs are shown voluntarily, there is a good chance they will not be shown with captions.<sup>21</sup> Additionally, some of the consumers most at risk of losing television service may not be a desirable demographic for advertisers. Although the DTV education plan of the National Association of Broadcasters<sup>22</sup> should be commended, the actual airing of PSAs provided to stations would remain at the discretion of licensees. Some stations are not NAB members and the NAB cannot compel stations to air PSAs. To ensure that no viewer is left behind, the Commission must ensure that all stations must be responsible for informing their viewers

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<sup>20</sup> See, for example, Pelofsky, Jeremy and Megan Davies. “TV, radio look for record ad money in election.” Reuters. August 24, 2007

([http://today.reuters.com/news/articlenews.aspx?type=industryNews&storyID=2007-08-24T113414Z\\_01\\_N24285067\\_RTRIDST\\_0\\_INDUSTRY-USA-POLITICS-ADVERTISING-DC.XML&pageNumber=0&imageid=&cap=&sz=13&WTModLoc=NewsArt-C1-ArticlePage3](http://today.reuters.com/news/articlenews.aspx?type=industryNews&storyID=2007-08-24T113414Z_01_N24285067_RTRIDST_0_INDUSTRY-USA-POLITICS-ADVERTISING-DC.XML&pageNumber=0&imageid=&cap=&sz=13&WTModLoc=NewsArt-C1-ArticlePage3))

<sup>21</sup> PSAs that are not federally funded and are under ten minutes are not subject to the FCC’s closed captioning obligations.

<sup>22</sup> See letter from Jack Sander, National Association of Broadcasters, to FCC Chairman Kevin Martin *In the Matter of DTV Consumer Education Initiative*. August 21, 2007. ([http://www.nab.org/xert/corpcomm/pressrel/releases/082107\\_Sander\\_FCC\\_DTV.pdf](http://www.nab.org/xert/corpcomm/pressrel/releases/082107_Sander_FCC_DTV.pdf))

of the coming transition.

Benton recommends that the Commission require each broadcast television licensee and each radio licensee to air PSAs about the transition, consumers' future viewing options, and the NTIA digital-to-analog converter box discount program. The Commission should then require monthly, electronic reporting from each station so the on-air efforts can be monitored. The Commission should require that stations certify that they are complying with the PSA requirement and inform stations that the failure to comply with the PSA requirement and/or certification may result in the maximum civil penalties permitted by law.

Moreover, broadcasters should be encouraged to air programming – either within local newscasts or separate full-length programs – that describes the transition, the benefits, consumer options, and demonstrate converter boxes.

Benton recommends that the Commission establish minimum PSA requirements. Benton endorses the recommendation of Capitol Broadcasting's Jim Goodman who, as a member of the Presidential Advisory Committee on the Public Interest Obligations of Digital Television, wrote that, at a minimum, television broadcasters be required to air 110 to 150 PSAs – on a variety of subjects -- each week distributed throughout the broadcast day.<sup>23</sup>

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<sup>23</sup> Public Interest Obligations of Digital Television. "Charting the Digital Future." 1998. James F. Goodmon Supporting Minimum Standards for Digital Television Broadcasters including the report of the Working Group on Minimum Public Interest Standards with attachment. This number reflected the full range of PSAs to be required and did not relate to PSAs specifically about the DTV transition.

Benton recommends that the Commission tie the PSA requirement to programming ratings. DTV-related PSAs should be run during a broadcasters' highest-rated shows and the shows with the highest ratings for at-risk communities including households with annual incomes of less than \$30,000 and are headed by either an individual over age 50 or native Spanish speakers.

PSAs should not confuse consumers. Industry groups are devoting substantial resources to crafting the messages for DTV PSAs. The FCC should be part of this process and ensure that the messages accurately convey that digital over-the-air television will continue to be free and will offer consumers many more channels, including programming that meets basic educational/informational needs for children and, hopefully, more coverage of electoral and local public affairs, services to improve disability access, and information for viewers in times of emergency. It will also give viewers a better picture, even on an older set—if they get a converter box. PSAs should also convey consumer options—including the least expensive path to receiving DTV signals. PSAs should be shown to focus groups to ensure they make sense to the people who must invest in new digital television technology.

PSAs must be accessible for many different groups. As appropriate, PSAs should be in Spanish and Asian languages. The FCC should mandate that these PSAs be captioned, preferably with open captions, whether for broadcast, cable, satellite or on the Internet. The Commission should encourage and consider producing educational videos in

American Sign Language that are accessible on the Internet. They should also include toll free numbers in appropriate languages to call for more information and the numbers should be displayed both visually and audibly. Call center staff responding to calls must be trained to honor their legal obligation to receive and respond to phone calls that come into the center via specialized equipment and telecommunications relay services (TRS) from persons with hearing and speech disabilities. Voice menu systems, which are difficult for people with hearing loss to navigate, should be avoided.

The Commission has the authority to require these PSAs. Congress enacted the Communications Act of 1934 for the purpose, in part, of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication..."<sup>24</sup> Under the Act the Commission "from time to time, as public convenience, interest, or necessity requires shall" "make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of [the] Act"<sup>25</sup> and "(m)ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act."<sup>26</sup> The

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<sup>24</sup> 47 USC 151

<sup>25</sup> 47 USC 303(f)

<sup>26</sup> 47 USC 303(r)

Commission already makes similar requirements of broadcasters.<sup>27</sup>

The extraordinary circumstances of the DTV transition demand this measure by the Commission. Moreover, the requirement will come with a sunset. Although PSAs will need to be run frequently through 2008 and early 2009, the need for the PSAs should end by March 31, 2009 at the latest.

#### **B. THE COMMISSION SHOULD REQUIRE MONTHLY PSA REPORTING**

As noted above, the Commission should require television broadcasters to file monthly, electronic reports on their consumer education efforts, including the time, frequency, and content of public service announcements aired. The Commission should make these reports available via a centralized, searchable database on FCC website.

For some time now, the Commission has been working both on its own and in cooperation with industry, other government agencies, and consumer groups to advance the transition and promote consumer awareness. Obviously, these various efforts and others will continue through the early months of 2009. To best coordinate these efforts

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<sup>27</sup> See, for example, the Station Identification requirement (47 CFR Section 73.1201). Stations must make identification announcements when they sign on and off for the day. They must also make the announcements hourly, as close to the hour as possible, at a natural programming break. TV stations may make these announcements on- screen or by voice only. Official station identification includes the station's call letters followed by the community or communities specified in its license as the station's location. Between the call letters and its community, the station may insert the name of the licensee, the station's channel number, and/or its frequency. Also see station renewal announcements (47 CFR Section 73.3580). The regulations on the announcements that need to be made when a licensee files a renewal application are pretty specific - and include pre-filing and post filing announcements and may vary depending on station class. Announcements must be made over the TV; stations primarily broadcasting in a foreign language should broadcast the announcements in that language. In presenting the announcements, TV stations must use visuals with the licensee's and the FCC's addresses when the information is being orally presented by the announcer. Licensee must certify they have complied with the rule. For pre-filing renewal announcements of TV stations at least two of the required announcements must be broadcast at certain times of day.

and provide easy access to information for new efforts, the Commission should act as an information hub for the DTV education campaign. Part of this role should be to provide, for all these working parts, information about where, when and how the message of the DTV transition is being delivered to communities throughout the country. The best way to do this is through disclosure of television broadcasters' efforts in a centralized database. By making the reporting a requirement and enforcing the rule, the Commission would ensure that all stations contributed to the database.

The Commission should require these filings beginning January 2, 2008, and continue through May 1, 2009. The data, in turn, should be analyzed and used in frequent reports to Congress on the progress of the DTV education plan.

**C. THE COMMISSION SHOULD REQUIRE MVPDs TO INFORM THEIR CONSUMERS ABOUT THE DTV TRANSITION**

The Commission seeks comments on whether multichannel video programming distributors (MVPDs) should be required to include in customer bills information about the digital television transition and consumers' future viewing options. Such inserts would be an optimal way to reach consumers that value television service. And, for those consumers, the inserts would augment information likely first gained through broadcasted PSAs.

Benton urges the Commission require MVPDs to educate their customers about the effect of the DTV transition on their TV service. MVPDs should be required to make use of

both the video systems they own and to make use of the billing relationships they have with consumers. MVPDs education efforts should include PSAs run on their systems as well as hard copy mailings to consumers' homes (*e.g.* bill inserts, statement messages, individual mailings, etc.). For printed material, when requested to do so, MVPDs should make DTV transition information available in alternative formats to individuals who are blind or low vision. The Commission should also require quarterly reporting from each MVPD so their efforts can be monitored.

Both the Commission and MVPDs must keep in mind that there could be some consumer confusion even with the most carefully crafted PSA campaign. MVPD consumers must receive reliable information about how the transition will affect them. MVPDs must be a reliable source of that information and not exploit the opportunity to sell consumers equipment or services they may not need. MVPD subscribers should be made aware if they will be required to rent a set-top box or buy a digital-to-analog converter box to continue viewing broadcast TV channels after the transition. If the latter, consumers should be made aware of how the converter box will work with their MVPD hook-up. If MVPDs include inserts about the transition and future viewing options with bills, consumer protections should be in place to ensure that these consumers know their full range of options, including the least expensive ones. Toll free numbers to call centers should also be noted on the bill inserts and notices.

Benton recommends that these call centers should be staffed with multilingual operators appropriate to the communities served by the MVPD. Toll free numbers to call centers

should be set up for the explicit purpose of responding to consumer calls on this matter, and the numbers of those centers should be noted on the bill inserts and notices. Again, such call centers should be familiar with and prepared to receive and respond to calls made via specialized equipment used by people with hearing and speech disabilities and through TRS.

**D. ELECTRONICS MANUFACTURERS SHOULD INFORM CONSUMERS ABOUT THE DTV TRANSITION**

The Commission seeks comments on whether consumer electronics manufacturers should be required to provide information about the digital television transition to consumers. Information on the transition should accompany other printed information normally provided the consumer when a television set is purchased. Ideally, such information should be standardized with input from the Commission. Toll free numbers to call centers should be provided on this information, and the call centers prepared to receive and respond to calls made via specialized equipment used by people with hearing and speech disabilities and through TRS.

Similar to the concerns raised in section C above, the Commission should adopt and enforce rules that ensure consumers get the correct information concerning their future viewing options, the digital-to-analog converter box coupon program and DTV technology compatibility with existing technology including VCRs, DVRs, and DVDs. Consumers should always be made aware of their least expensive migration paths to DTV.

**E. ELECTRONICS RETAILERS HAVE A ROLE IN THE DTV EDUCATION CAMPAIGN AND ELECTRONICS CONSUMERS MUST NOT BE HARMED BY RETAIL INFORMATION ABOUT THE DTV TRANSITION**

The Commission seeks comments on whether the NTIA and Commission should require retailers who participate in the converter box coupon program to detail their employee training and consumer information plans. Moreover, the Commission asks if it should have Commission staff conduct spot inspections.

Ideally, the FCC should help create standardized messages that would be used in such trainings and consumer information plans. Point of sale information should be provided in the retail outlets in the main languages spoken in the communities served by these retailers, as well as in alternative formats for individuals who are blind or low vision. Toll free numbers to a call center where the consumer could obtain more information should be provided. The call center should be staffed by representatives who speak the languages used in the point of sale information. Such call center staff must be trained to accept, receive, and respond to phone calls that come into the center through specialized equipment or via the nation's telecommunications relay service system from persons with hearing disabilities and persons with speech disabilities who use relay services. If possible, such point of sale information should be provided by all electronics retailers. Ideally, information on the DTV transition should also be included in newspaper ads, etc. placed by these retailers.

Consumer Electronics Retailer Training and Education should include information on the ability of individual converter boxes to correctly pass through captions and on-site demonstration of any setup steps the converter box requires to display captioning. Consumers should be able to view captions on television models at the point of sale and test captioning features.

The training should also include an easy return policy, without penalties, for DTV converter boxes and other television receiving and display electronic equipment that do not work correctly and/or do not display captioning.

Commission enforcement should include visits to retailers to see what kind of information is passed on to consumers by retail employees.

Similar to the concerns raised in sections C and D above, the Commission should adopt and enforce rules that ensure consumers get the correct information concerning their future viewing options, the digital-to-analog converter box coupon program and DTV technology compatibility with existing technology including VCRs, DVRs, and DVDs. Consumers should always be made aware of their least expensive migration paths to DTV.

**F. DTV.GOV PARTNERS HAVE A SPECIAL RESPONSIBILITY TO EDUCATE DTV CONSUMERS**

The Commission seeks comments on whether it should require its 50+ DTV.gov partners to report their specific outreach efforts. For the eight television station owners<sup>28</sup> in the partnership, their on air DTV education efforts should be reported as noted above in sections A and B. For the broadcast-related organizations that are not licensed for television broadcasting – ABCNews Now, American Public Television Stations, the Association for Maximum Service Television (MSTV), the National Association of Broadcasters, and the Public Broadcasting Service – they should be asked to report what their on air efforts are or how they are encouraging their members to participate in on air efforts.

For all the groups in the partnership, the Commission should remind them, via Public Notice, that they have an important responsibility to ensure that consumers get the correct information concerning their future viewing options, the digital-to-analog converter box coupon program and DTV technology compatibility with existing technology including VCRs, DVRs, and DVDs. Consumers should always be made aware of their least expensive migration paths to DTV.

The Commission reach out and include consumer groups and government agencies that have public points of contact with targeted groups in the DTV.gov partnership.

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<sup>28</sup> ABC, Capitol Broadcasting, CBS, Fox, NBC, Sinclair, Telemundo and Univision.

But reporting of outreach efforts may not be sufficient. The Commission should encourage, if not require, that the partners coordinate their efforts with each other and with government outreach and education. All outreach and education should use standardized messages that are created with the help of the Commission. Coordination will help insure that the hard to reach are reached. Survey data should be used to target populations and identify in what languages outreach is needed.

Outreach efforts should not rely only on the Internet. While information provided on web sites and e-lists may be useful to some, other target populations as those consumers have limited access to the Internet. To reach all target population, any outreach plan must rely heavily on community based organizations (CBOs) that serve these consumers. CBOs will need materials provided for free, in bulk and in the different languages spoken in the communities they serve. The Commission should encourage and consider producing educational videos in American Sign Language. Training materials for CBO staff will be needed in addition to brochures for consumers. Such brochures must be available in accessible formats for individuals who are blind. In addition, Benton notes that extensive advertisements will need to be placed in the ethnic media at the national and local level.

#### **G. THE COMMISSION MUST DO EVERYTHING IN ITS CAPACITY**

The Commission seeks comments on additional education proposals including broadcaster public file requirements, notice requirements by telecommunications carriers that receive funds under the Low Income Federal universal service program and 700 MHz auction winners. As noted by Chairman Martin, the Commission must do

everything in its statutory and budgetary capacity to make sure that no American is left behind in the transition to DTV.<sup>29</sup> The NPRM invites comment on a number of creative consumer educational mechanisms to move DTV education forward and the Commission should consider all of them. Specifically:

- **Broadcaster public file requirements:** The Commission should require electronic filing above and included in a public station's public file and on the station's web site, if it has one.
- **Lifeline/Link-up Notices:** Bneton believes that there is great potential to reach a hard to reach at-risk community by encouraging notices from telecommunications carriers to their customers, especially their Lifeline and Linkup customers. In addition, the Commission should partner with the existing Federal programs to reach these households. The Commission has established as a baseline criteria for Lifeline/LinkUp eligibility participation in Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance (Section 8), Low-Income Home Energy Assistance Program (LIHEAP), Temporary Assistance to Needy Families (TANF) or the National School Lunch Programs Free Lunch Program.<sup>30</sup> The Commission should work with these program administrators to distribute information about the DTV transition.
- **700 MHz auction winners:** When 700MHz winners are determined, those entities will have a huge financial stake in analog TV spectrum being vacated for their use. As part of the 700 MHz auction rules, the Commission should require

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<sup>29</sup> Martin Response at page 1.

<sup>30</sup> See Commission's Lifeline Link Up Consumer Page ([http://www.lifeline.gov/lifeline\\_Consumers.html](http://www.lifeline.gov/lifeline_Consumers.html)).

the winners to participate in the DTV education campaign and report on how they have aided the DTV education effort.

In addition, the Commission should consider other ways the Federal government can lead this effort:

- According to the Bureau of Labor Statistics, the federal government employs nearly 2 million civilians – 5 out of every 6 work outside the Washington, DC area. The Commission should consider using the federal government, the nation’s largest employer, to inform every federal employee about the transition – perhaps through paycheck inserts. This program could be a model for voluntary programs by MVPDs, Lifeline/LinkUp providers and other billers noted in the NPRM. These employees could then share news of the transition to friends and family via word of mouth.
- The Commission should seek additional Federal partners that have local contact points with citizens such as the United States Post Office and the Social Security Administration.
- The Commission should consider producing, and working with industry partners to distribute, its own American Sign Language, captioned and video described PSAs to stations and MVPDs. In addition, the Commission should post these PSAs on Internet video sharing sites such as YouTube. The Commission should request money from Congress for a paid-for PSA campaign. Such payments are often needed for airing of PSAs in the ethnic media.

- The Commission should encourage every government web site – including those of members of Congress – to link to DTV education websites.
- FCC commissioners and staff should make as many public appearances, including media appearances such as daytime talk shows, as practical to discuss the DTV transition.
- The Commission should make frequent reports to Congress on the progress of the campaign and make these reports easily available to the public.

#### **H. THE COMMISSION SHOULD ENSURE COORDINATED EFFORTS TO RESOLVE TECHNICAL PROBLEMS ASSOCIATED WITH CLOSED CAPTIONING SO THAT CONSUMERS WITH HEARING LOSS ARE NOT HARMED BY THE DTV TRANSITION**

In order to ensure that consumers with disabilities are not harmed by the transition, efforts at trouble-shooting the various causes associated with captioning problems needs to occur. To this end, the Commission should convene a working group that includes representatives from the broadcasting, cable, and satellite industries, television and set top box equipment manufacturers, MVPDs, captioning providers, electronic retailers and captioning consumers. Such a group, which should include top engineering personnel from the relevant industries and the Commission, should be tasked with 1) identifying current and anticipated problems with the transmission and display of captions over digital programming, 2) evaluating and assessing their components, systems, and set top boxes for compatibility with captioning services, 3) developing solutions to existing and potential problems in order to ensure the capability to pass through closed captions intact

to the consumer. Captions provide the only means of access to television programming for people with hearing loss; even the most comprehensive efforts to educate this population about the digital transition will be meaningless if, when the transition takes place, this public cannot access the captions that are available by the FCC's rules.

#### **IV. CONCLUSION: LEAVE NO VIEWER BEHIND**

For the DTV transition to work, the Commission needs the cooperation of broadcasters, MVPDs, consumer electronics manufacturers, consumer electronics retailers, and, most importantly, consumers. Unfortunately, this most important link in the broadcast television chain is unaware of its responsibilities.

The Commission has a Herculean task and scant resources afforded it. In just over 500 days, millions of US households must be made aware of the transition and convinced to buy a HDTV set, subscribe to a pay TV service, and/or buy and install a digital-to-analog converter box – or lose their broadcast TV service. As the agency leading this transition, the Commission, too, must lead the education effort. Therefore, Benton strongly urges the Commission to leave no viewer behind and to focus its efforts on the consumers most likely to be left behind in the transition. The Commission must use all the tools – mainly its rules – to ensure that the digital TV education campaign reaches consumers, that consumers are not harmed by the transition, and that consumers are empowered to act in their own best interests.

Respectfully submitted,

Benton Foundation

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September 17, 2007

# Attachment A

In the Matter of Third Periodic Review of the Commission's Rules and Policies  
Affecting the Conversion To Digital Television

Comments of

Benton Foundation, The Campaign Legal Center,  
Free Press, Communication Service For The Deaf, Hearing Loss Association Of America  
– New York State, Northern Virginia Resource Center For Deaf And Hard Of Hearing  
Persons, United States Conference Of Catholic Bishops, National Hispanic Media  
Coalition, Democracy Now, Consumer Action, Common Cause, Citizen Advocacy  
Center, Common Cause Illinois, Common Cause Michigan, Common Cause Ohio,  
Common Cause Wisconsin, Illinois Campaign For Political Reform, Illinois Pirg, League  
Of Women Voters Of Minnesota, League Of Women Voters Of Wisconsin, Ohio Citizen  
Action Education Fund, Sunshine Project -- University Of Illinois At Springfield, Take  
Action Minnesota, Wisconsin Democracy Campaign, Michigan Campaign Finance  
Network, The Alliance For Community Media, The Center For Digital Democracy, And  
Chicago Media Action