

**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
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**Comments Of The  
Consumer Electronics Retailers Coalition On  
Notice Of Proposed Rule Making**

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The Consumer Electronics Retailers Coalition (“CERC”) respectfully submits these Comments on this Notice of Proposed Rulemaking with respect to DTV Consumer Education.<sup>1</sup> CERC members include specialist retailers Best Buy Co., Inc., Circuit City Stores, Inc., and RadioShack Corporation; general retailers Sears Holdings Corporation (Sears and K-Mart); Target Corporation, and Wal-Mart Stores, Inc.; online retailer Amazon.com; and the North American Retailer Dealers Association (NARDA), the National Retail Federation (NRF), and the Retail Industry Leaders Association (RILA).

In this NPRM, the Commission asks: (1) Whether the Commission should exercise leadership in achieving specific goals, as urged by congressional leaders, and (2) whether and to what extent the Commission has enforcement authority to accomplish these goals via regulation. CERC and its members have consistently answered the first question in the affirmative, and are pleased to expand on that answer in these Comments. CERC and members are on record,

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<sup>1</sup> *In the Matter of DTV Consumer Education Initiative*, MB Docket No. 07-148, Notice of Proposed Rulemaking, rel. July 30, 2007 (“NPRM”).

however, that the Commission does not have regulatory authority over retail practices.

Nevertheless, CERC and its members are pleased to acknowledge the Commission's position of *leadership in the public interest* and hereby pledge their cooperation in helping the Commission to exercise its responsibilities so as to achieve a successful result in the DTV Transition.

**I. CERC Has An Ongoing Commitment To Consumer And Retailer Education, To Working With The FCC, And To The NTIA "CECB" Program.**

On behalf of its members and the retail community at large, CERC has long advocated voluntary public education measures to promote the DTV Transition, and has been a leader among industry groups in taking affirmative steps to bring accurate information to the consuming public:

- CERC was the first to publish a comprehensive Consumer Guide To The DTV Transition and the CECB Converter Box Program, initially issued well before passage of the Transition legislation, and twice updated since. The Guide appears on the CERC web site, [www.ceretailers.org](http://www.ceretailers.org), and has been widely linked to by others, including CERC members and the Commission. CERC also posts shorter-form consumer advisories which are also linked to by members.
- CERC maintains information on the DTV Transition on its web site, available to all retailers and members of the public.
- CERC was a founding member of the DTV Transition Coalition and is active in the Coalition's public outreach efforts.
- CERC has undertaken several joint public education efforts with the Commission –
  - Co-branding with the FCC and the Consumer Electronics Association (CEA) of a "DTV Tip Sheet," distribution of copies to Best Buy and Circuit City stores, printing twice in the NARDA magazine.
  - Co-production and branding with the Commission of an advisory to all retailers with respect to the end of manufacturers' distribution of "analog only" television receivers, and the Commission's labeling regulation with respect to analog television receivers.<sup>2</sup>

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<sup>2</sup> 47 C.F.R. § 15.117(k).

- CERC maintains a fact sheet on the Commission’s “analog only” labeling regulation, for the benefit of all retailers.
- CERC has worked with the National Telecommunications and Information Agency (NTIA) to facilitate its Coupon Eligible Converter Box (“CECB”) program and has posted NTIA information and application forms on the CERC web site.
- CERC has pledged to the NTIA that it will provide information and guidance with respect to the CECB Program to all retailers, irrespective of CERC membership.
- CERC representatives have convened forums and traveled to meetings to advise non-member companies about the DTV Transition generally and FCC and NTIA initiatives specifically.
- CERC member companies have instituted consumer educational and associate training measures, including linking or copying CERC and FCC material via their web stores, and are in consultation with the Commission as to specific enhancements as the DTV Transition approaches.
- CERC member companies have been in early consultation with NTIA’s CECB Program Contractor team about participation in the CECB program at the earliest feasible time, pending certification of qualified CECB products, availability of CECBs from manufacturers, coupon availability, a form of agreement from the Contractor, and conformance of operational systems for processing coupons.

**II. While CERC Endorses And Will Cooperate With The Commission’s Leadership Role In The DTV Transition, CERC Is On Record That The Commission Does Not Have Regulatory Authority Over Retail Practices.**

CERC agrees with congressional leaders<sup>3</sup> that the FCC is “well suited to lead the [DTV Transition] effort.” CERC agrees with the Commission that it should take “whatever steps we can” to exert leadership and to coordinate public education as to the DTV Transition. CERC is on record in another Commission docket, however, that the

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<sup>3</sup> NPRM at 2, n. 2 and Appendix B. 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, to the Honorable Kevin J. Martin, Chairman, the Honorable Michael J. Copps, Commissioner, the Honorable Jonathan S. Adelstein, Commissioner, the Honorable Deborah Taylor Tate, Commissioner, and the Honorable Robert M. McDowell, Commissioner, Federal Communications Commission, received May 24, 2007.

Commission does not have direct or ancillary jurisdiction over retail practices. Because CERC and its members have wished to cooperate with Commission initiatives, they have not stressed this view to date with respect to the DTV Transition. CERC feels obliged, however, to submit a concise answer to a specific question on this subject when posed by the Commission.

**A. CERC Affirms And Endorses The Commission's Leadership Role In The DTV Transition.**

CERC and its members have endorsed Commission leadership via action as well as words. The projects noted above are but examples of CERC's ongoing consultation with Commissioners and staff since well before the Transition legislation was passed.

CERC and its members have strived to maintain coordination with the Commission by –

- Co-branding and distributing consumer and retailer education material
- Consulting as to the facts and messaging of CERC educational materials
- Working with the NTIA while maintaining constructive consultations with FCC staff as to coordination of message

As we expand upon further below, in Part III, CERC and its members intend to continue their cooperation with the Commission as to the Transition. We specifically agree with congressional leaders that the Commission should be looked to for leadership in the areas addressed in their letter.

**B. The FCC Does Not Have Regulatory Authority Over Retail Practices.**

CERC and its members have endeavored to take a cooperative view as to the Commission's ability to guide and influence retailers despite their legal conclusion, previously expressed in another recent Commission docket, that the Commission's regulatory jurisdiction over retail practices is limited at best.

In 2005 CERC and a CERC member, also in response to a specific question posed by the Commission in a rulemaking, were obliged to express the view that the Commission lacks any delegated or ancillary authority to regulate sales practices at retail.<sup>4</sup> Nevertheless, in light of the importance of the DTV Transition and CERC's support of the FCC's leadership role, when the Commission announced its "analog only" labeling regulations,<sup>5</sup> CERC was circumspect. Without wavering from its legal position, CERC refrained from challenging this regulation in court. Instead, CERC issued a press release referencing jurisdiction only obliquely, while pledging cooperation:

It was CERC's view that, like the hard date itself, it was up to Congress to establish a clear and standard analog-only labeling obligation and label text. CERC worked with the House staff and CEA on, and supported, the label provisions of the DTV legislation that passed the House in the last Congress. In the last few weeks, CERC has appreciated the opportunity to work with FCC staff on a standard text, and on an appropriate period for compliance.

The text and the nature of the labeling obligation, as released by the FCC yesterday, is very close, but not identical to,<sup>6</sup> the proposed legislative text and obligation with which CERC and its members were familiar, and which some retailers had begun to implement on a voluntary basis. Nevertheless, we are confident that CERC members will be in compliance as of the effective date. We also invite – as we do on any FCC or NTIA DTV Transition issue – non-CERC retailer members to forward any questions as to retailer compliance obligations, or other aspects of the Transition, to us via the CERC web site, [www.ceretailers.org](http://www.ceretailers.org).<sup>7</sup>

CERC believes that the relationship between the Commission and retailers is grounded most soundly in affirmative voluntary undertakings – as it has been – rather than in regulation.

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<sup>4</sup> See, *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid Compatibility*, Order, WT Docket 01-309 (June 21, 2005); Comments of Consumer Electronics Retailers Coalition at 3 – 7; Comments of RadioShack Corporation at 4 - 11 (both September 26, 2005) (the "HAC" proceeding).

<sup>5</sup> 47 C.F.R. § 15.117(k).

<sup>6</sup> (Note for this Comment: Some CERC members had begun printing material based on the previous legislative text which, it had been understood, would be the basis of the labeling regulation. Such text was based on a well-founded but ultimately incorrect assumption that the labeling obligation would apply only to televisions and not to recording devices.)

<sup>7</sup> CERC press release, April 26, 2007.

The courts have held that “[t]he FCC, like other federal agencies, ‘literally has no power to act ... unless and until Congress confers power upon it.’”<sup>8</sup> The FCC can promulgate regulations under ancillary authority only if it can satisfy a two-part test:

First, the subject of the regulation must be covered by the Commission's general grant of jurisdiction under Title I of the Communications Act, which, as noted above, encompasses “‘all interstate and foreign communication by wire or radio.’” *United States v. Southwestern Cable Co.*, 392 U.S. 157, 167 (quoting 47 U.S.C. § 152(a)). Second, the subject of the regulation must be “reasonably ancillary to the effective performance of the Commission's various responsibilities. *Id.* at 178.”<sup>9</sup>

The Court of Appeals held in the *Broadcast Flag* case that FCC jurisdiction extends only to entities (including parties responsible for receivers) *engaged in* communication by wire or radio:

While the Supreme Court has described the jurisdictional powers of the FCC as ... expansive, there are limits to those powers. No case has ever permitted, and the commission has never, to our knowledge, asserted jurisdiction over an entity not engaged in “communication by wire or radio.”<sup>10</sup>

CERC and CERC member RadioShack answered an FCC question about its jurisdiction over retailer practices in the “HAC” proceeding. They concluded that the Commission’s regulatory authority does not extend to retailer practices when they are not engaged in communication by wire or radio.<sup>11</sup> As RadioShack commented:

The Communications Act authorizes the Commission to regulate licensees of radio spectrum and also grants the Commission jurisdiction to regulate providers of commercial mobile radio service (CMRS). However, there is no statutory authority to regulate an independent retailer—that is neither a licensee of spectrum nor a provider of CMRS ....

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<sup>8</sup> *American Library Ass’n v. FCC*, 406 F.3d 689, 691 (D.C. Cir. 2005) [“Broadcast Flag Opinion”] (citing *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986)); *see also Regents of University System of Ga. v. Carroll*, 338 U.S. 586, 597 (1950).

<sup>9</sup> *Id.* at 692-93.

<sup>10</sup> Broadcast Flag opinion at 702, citing *Accuracy in Media, Inc. v. FCC*, 521 F.2d 288, 293 (D.C. Cir. 1975).

<sup>11</sup> HAC proceeding, *id.*

Similarly, CERC is constrained to believe that the Commission has no authority to regulate, and could cite no precedent for the regulation of, retailers of broadcast reception equipment that is otherwise compliant with Commission regulations.

C. **The Commission Does Not Have Regulatory Authority Over Retailer Practices As To The NTIA CECB Program.**

The Commission asks, more specifically, whether it could be involved in imposing penalties on retailers for non-compliance as to the NTIA CECB program. *Even if* the Commission had some authority to regulate practices at retail, it would still have to demonstrate that the exercise of such regulatory authority with respect to the NTIA CECB program had been delegated directly to the FCC or is ancillary to some substantive area in which it had been delegated authority from the Congress. Since the Congress did not delegate any authority to the Commission when it established the NTIA program, the only apparent basis for the Commission extending its authority over retailers to supervising and sanctioning participation in the NTIA program would be as an extension of some other direct authority, or as a further *ancillary* extension of *ancillary* authority.

It is not evident to what direct authority any enforcement activity by the Commission would be ancillary, as the Congress specifically delegated responsibility for the CECB program to the NTIA. Nor would it be proper to infer such authority over retailers as ancillary to an ancillary authority already exerted with respect to the labeling of television receiving equipment. CERC cannot agree that the former ancillary authority exists, and the courts have disapproved of inferring doubly ancillary authority.

CERC must disagree with the rationale for asserting ancillary authority over retail practices as expressed by the Commission in the Labeling Report & Order.<sup>12</sup> That rationale is based on a purported substantive tie to the *Tuner Mandate* Report & Order (upheld by the same court). Yet that R&O governed *manufacturers*, and of a *different product*. This argument seems at best indistinguishable from and in several respects weaker than the one rejected by the Court of Appeals in the Broadcast Flag case.

In the Labeling R&O, the Commission dismissed the impediment posed by the *Broadcast Flag* decision as follows:

The ...D.C. Circuit held that the Commission lacked jurisdiction to regulate the post-transmission copying of program content. The requirement we adopt here, by contrast, does not involve post-transmission conduct. Rather, it directly concerns the ability (or inability) of television equipment to receive broadcast transmissions. As a result, the subject of the regulation is covered by Title I of the Act.<sup>13</sup>

Here the Commission simply re-states the rationale for the Tuner Mandate, which is no longer in question. The All Channel Receiver Act of 1962 (ACRA),<sup>14</sup> pursuant to which the Tuner Mandate was upheld, gives the FCC “authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of

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<sup>12</sup> *In the Matter of Second Periodic Review of the Commission’s Rules & Policies Affecting the Conversion to Digital Television*, Second Report & Order, MB Docket No. 03-15, RM-9832, at 10-12 ¶¶ 15-20 (May 3, 2007) (“Labeling Report & Order”).

<sup>13</sup> Labeling Report & Order ¶ 17; *See Americal Library Ass’n*, 406 F.3d at 692 (“The Commission’s general jurisdictional grant under Title I plainly encompasses the regulation of apparatus that can receive television broadcast content, but only while those apparatus are engaged in the process of receiving a television broadcast.”).

<sup>14</sup> Labeling Order at 11 ¶ 18. The problems with this rationale are: (1) As in the case of the Tuner Mandate, the Commission’s jurisdiction was properly aimed at, and exhausted by, the imposition of a requirement for *tuning* TV signals. As the Court of Appeals specifically ruled in the Broadcast Flag case, the Commission lacks jurisdiction as to *subsequent* operations – or merchandising – of the product with the tuner; (2) even more fundamentally, a TV receiver *without* a digital tuner is *not the same product* as the products governed by the Tuner Mandate, so long as it was if imported and distributed legally by the responsible party (*i.e.*, prior to the effective Tuner Mandate dates). The Tuner Mandate has no relevance to lawfully analog-only products whatsoever, especially when they are in the hands of retailers. *Hence*, even if somehow the FCC did have “post-tuner” jurisdiction over these products, which are not subject to the tuner mandate at all, such jurisdiction could not provide a basis for regulating the merchandising of the product *in the hands of retailers*.

adequately receiving all frequencies allocated by the Commission to television broadcasting.”<sup>15</sup> The ACRA thus may be a basis for *including* a digital tuner, but has no apparent relevance to *labeling* the sole presence of an *analog* tuner – particularly when, unlike the case of the Tuner Mandate, *the FCC has never imposed any such labeling requirement on the manufacturer of the product, who is the responsible party for compliance with the ACRA.*<sup>16</sup>

As in the Broadcast Flag case, the Commission would purport to extend its authority to receivers *after, and apart from the validity of, their regulated tuning functions*. The ACRA refers specifically to the “design” of receiving devices, and does not confer any authority regarding the marketing or sale of such devices. As the Court of Appeals said in the *Broadcast Flag* case:

As petitioners point out, “the Broadcast Flag rules do not regulate interstate ‘radio communications’ as defined by Title I, because the Flag is not needed to make a DTV transmission, does not change whether DTV signals can be received, and has no effect *until after the DTV transmission is complete*.” We agree. Because the Commission overstepped the limits of its delegated authority, we grant the petition for review.<sup>17</sup>

Similarly, *subsequent* retail practices as to lawfully manufactured and imported “analog-only” receivers, as a *subject* lacks the sort of nexus to television tuning in general, and to DTV reception in particular, required by the Court of Appeals in the Broadcast Flag case – even if jurisdiction over retailers, but not the parties responsible for ACRA compliance, somehow could be assumed.

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<sup>15</sup> § 303(s).

<sup>16</sup> The language of the House DTV Transition legislation, which CERC endorsed and on which Section 15.117(k) purportedly is based, imposed a labeling duty on *manufacturers of TV sets*, and gave retailers the option of either leaving the label on the TV set or moving it so as to be in the vicinity of the product when displayed at retail. The absence of any such provision in Section 15.117(k) illustrates why jurisdiction asserted solely over the retailer is problematical – with no label supplied by the manufacturer or responsibility imposed thereon, retailers in many cases found themselves ill-prepared to ascertain which of their products, already on shelves and in inventory, required labels.

<sup>17</sup> Broadcast Flag opinion at 692 (emphasis supplied).

The Court of Appeals upheld the tuner mandate on the explicit basis that the mandate was an exercise of authority over responsible parties under ACRA – not under ancillary authority to further the digital TV transition.<sup>18</sup> The Court did not indicate, and the FCC did not claim, that its authority to impose the tuner mandate could derive solely from its ancillary authority with respect to the digital transition. In contrast, the labeling rule, by its terms, applies to devices that were *not required to contain digital tuners – devices that the FCC never regulated as to digital tuning under its ACRA authority, and on which no labeling obligation for responsible parties was imposed.* Accordingly, requiring retailers to place a label on devices that were not required to contain digital tuners is not an exercise of any “authority to require that apparatus designed to receive television pictures . . . be capable of adequately receiving all frequencies.” Similarly, there is no basis for inferring any authority to govern retail practices with respect to the NTIA CECB program. As the Court of Appeals observed in the Broadcast Flag case:

Great caution is warranted here, because the disputed broadcast flag regulations rest on no apparent statutory foundation and, thus, *appear to be ancillary to nothing.* \*\*\* [W]e will not construe the first prong [of the test for ancillary jurisdiction] in a manner that imposes no meaningful limits on the scope of the FCC’s general jurisdictional grant.<sup>19</sup>

More specifically, the reason given by the Court of Appeals applies in this instance too – even if the Commission had some additional authority over retail practices:

The insurmountable hurdle facing the FCC in this case is that the agency’s general jurisdictional grant does not encompass the regulation of consumer electronics products that can be used for receipt of wire or radio communication when those devices are not engaged in the process of radio or wire transmission.<sup>20</sup>

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<sup>18</sup> *Consumer Electronics Ass’n v. F.C.C.*, 347 F.3d 291, 294 (D.C. Cir. 2003).

<sup>19</sup> Broadcast Flag opinion at 702, emphasis supplied.

<sup>20</sup> Broadcast Flag opinion at 700. The Court went on to explain: “In other words, the *Flag Order* imposes regulations on devices that receive communications after those communications have occurred; it does not regulate the communications themselves. Because the demodulator products are not engaged in

In the case of the NTIA CECB program as well, and the products certified and distributed thereunder, the Commission's jurisdiction would thus seem limited to responsible parties' (*i.e.*, manufacturers') compliance with extant FCC regulations as to the *functioning* of the tuners in CECBs in receiving and decoding ATSC signals. Otherwise, the Commission appears to have no direct or ancillary authority over the NTIA CECB program. Indeed, it is CERC's understanding that the FCC's present role in certifying manufacturers' compliance with CECB metrics is specifically contractual, as a subcontractor to the NTIA – *not* regulatory, even though these manufacturers *are* the responsible parties for tuner compliance under the ACRA.

**III. CERC And Its Members Agree That the Commission Has A Vital Responsibility And Leadership Role As To the DTV Transition And Will Support And Assist the Commission In Fulfilling This Role.**

Even though CERC does not believe the FCC has authority to regulate retail practices, and the Commission's authority is circumscribed even as to manufacturer "responsible parties," CERC nevertheless recognizes the FCC's overall responsibilities pertaining to the DTV Transition, and pledges to help and support the Commission in fulfilling them. We agree with congressional leaders that the FCC has a vital leadership role to play in the Transition. CERC and its members have cooperated, and will cooperate further, to assist the Commission in this role. In addition to its role in public education, the Commission (along with congressional oversight) should be looked to for coordination and focus in the activities of the public and private sector members of the DTV Transition Coalition.

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'communication by wire or radio' *when they are subject to regulation* under the *Flag Order*, the Commission plainly exceeded the scope of its general jurisdictional grant under Title I in this case." Broadcast Flag decision at 703. (emphasis supplied)

**A. CERC and CERC Members Pledge Cooperation With The Commission Generally As To The DTV Transition.**

As the critical time periods for the DTV Transition approach, CERC and its members believe it is more important than ever that there be a *unified* government and private industry message to the public, and a carefully coordinated means of reaching the public and answering citizens' questions. CERC agrees with House Energy and Commerce Chairman Dingell and Subcommittee Chairman Markey that the Commission should play a leadership role in these respects. We pledge the cooperation of CERC and its members to continue to assist the Commission in this role.

Over the last month most CERC members have consulted with the Commission, via the Chairman, the Chairman's office, bureau staff, and/or Commissioners' legal advisors, and in this process have advised of their specific plans to inform and assist their customers as key Transition dates approach. Undertakings discussed with the Commission, some of which are already in process, cumulatively<sup>21</sup> are expected to include:

- Additional and more specific training for sales associates
- Retail floor signage about the Transition and the end of analog broadcasts
- Pamphlets with retailers' own advisories, distribution of FCC, NTIA, CERC, and DTV Transition Coalition printed material; links / frames to CERC and official sites
- Inclusion of DTV Transition advisory information in advertising supplements
- Participation in the NTIA CECB program
- Specialized web site about Transition as part of web store

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<sup>21</sup> As CERC includes specialist as well as general retailers, and store-front as well as web-based retailers, not every undertaking may be feasible for execution by every CERC member.

- Inclusion of Transition / end of analog information in in-store “video loops” (specialist retailers)
- Continued implementation of Commission-required labels until stocks of covered products are exhausted

Given the variety in the sources and, potentially, the content of published material and Internet advisories pertaining to the Transition, CERC, as a member and founder of the Steering Committee of the DTV Transition Coalition, has urged that early attention be paid to coordination in and rationalization of messaging and consumer contact points. For example, the public and private sectors need to pay careful attention to the number of “1-800” numbers that are offered to the public. They need carefully to coordinate the subject matter of each, the message communicated, and the resources available for answering questions. In this respect, the leadership role to be played by the Commission is as obvious as it is necessary. *CERC and its members specifically commit to working with the Commission, via the DTV Transition Coalition and otherwise, to assist the Commission, pursuant to the requests of Members of Congress and the Commission’s own responsibilities, in achieving a unified message that is strongly in the public interest at this critical time.* We will also be responsive to additional needs as identified by the Commission.

**B. CERC and CERC Members Pledge Cooperation With The Commission As To The NTIA CECB Program.**

CERC and its members have worked actively and specifically with the NTIA from almost the moment the agency established its team to fulfill the responsibilities delegated to it by the Congress. We will continue to do so until the last Coupon has been honored and last consumer need has been met and inquiry responded to.

Chairman Dingell and Chairman Markey, as has Chairman Inouye, have asked the Commission to work with the NTIA to assure effective implementation in a number of areas, including retail. As we note above, CERC believes that close coordination among *all* entities involved is essential in every phase of the Transition. Accordingly, CERC believes that continued close coordination among the FCC, the NTIA, CERC, CERC members, manufacturers, and other interested parties is essential, and that the Commission, as the senior entity involved, with continuing responsibilities in many related areas, should continue to exercise leadership. Yet as we note above, the authority delegated by the Congress for the CECB program was delegated to the NITA, and not to the Commission. NTIA regulations, which are already in force, do not provide for “enforcement efforts” other than termination from the program in the event that a retailer’s execution has not been satisfactory. Accordingly, with respect to “enforcement” there would be nothing on which the FCC and the NTIA could or should consult.

More broadly, however, CERC and its members *do* urge close consultation between the Commission and the NTIA because accurate messaging by participants is vital. Nor does CERC deny the interest of the Commission, from a public policy perspective, as to whether, to what extent, and how CERC members participate. CERC members are well aware of the Commission’s interest in this respect, and have been responsive to the Commission. CERC expects that its members will participate in the CECB program<sup>22</sup> and believes this participation will be most effective – and most

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<sup>22</sup> While CERC does not and cannot address commercial intentions of its competing members, CERC believes that most members have advised the FCC of an intention to participate, pending receipt of additional information as to specific expectations of the Program Contractor, certification of CECB products (CERC believes none has yet been certified), their availability from manufacturers, coupon

feasible for retailers – if the messaging of the FCC, the NTIA, and others is closely coordinated and aligned.

As is noted above, CERC members have already been in consultation, variously, with the Chairman, the Chairman's office, bureau staff, and Commissioners' staff as to their intended NTIA obligations and their implementation. *CERC and its members pledge to the Commission that they will continue to consult with the Commission, as well as with the NTIA and the Program Contractor, as to their participation in and execution of the NTIA CECB program in the interests of the public, and so as to best serve their customers and guests.*

#### **IV. Conclusion.**

CERC is pleased to acknowledge the continued prime role of the Commission in the DTV Transition, and to continue to work with Commissioners and staff in the public interest. While CERC cannot and does not find support for technical, legal, enforcement authority in the specific areas, relative to retail, on which the Commission has asked comment, CERC and its members, recognizing the Commission's heavy responsibilities and leadership role, have been and are willing to work with the Commission on a voluntary basis to achieve the goals identified by leading Members of Congress.

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availability, and implementation of technical system requirements for redeeming consumers' coupons. CERC and its members believe all parties, public and private, are working on these issues expeditiously and in good faith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marc A. Pearl', with a stylized flourish at the end.

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