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Received & Inspected

FEB - 5 2008

FCC Mail Room

February 5, 2008

Sent Via Federal Express

Marlene H. Dortch, Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

RE: DTV Consumer Education Initiative
MB Docket No. 07-148

Dear Ms. Dortch,

Enclosed please find one original and four copies of comments in the form of a letter from The Media Institute in the above-referenced matter. Each letter consists of two pages.

Sincerely,

Richard T. Kaplar
Vice President

Enclosures

No. of Copies rec'd 0+4
List ABCDE

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February 5, 2008

The Honorable Kevin J. Martin, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: DTV Consumer Education Initiative
MB Docket No. 07-148

Dear Chairman Martin,

We are writing to express our concern about possible action by the Federal Communications Commission (FCC) compelling broadcast television stations to carry government-mandated content pertaining to the digital television (DTV) transition. Such intrusive regulation is not only unnecessary but raises serious First Amendment questions.

We have seen reports indicating that the FCC is considering requiring all full-power commercial and noncommercial television stations in the country to air specified numbers of public service announcements (PSAs) containing government-mandated content about the upcoming transition from analog to digital broadcasting. Clearly, such an intrusive regulation would raise serious constitutional concerns because the First Amendment not only prevents the government from prohibiting speech, but also prevents the government from compelling speakers to express certain views. As the Supreme Court has unequivocally established, the First Amendment protects "the decision of both what to say and what *not* to say." *Riley v. National Federation of the Blind of N.C., Inc.*, 487 U.S. 781, 797 (1988).

Requiring all television broadcasters in the nation to disseminate a state-sponsored message would constitute a wholly unwarranted intrusion into broadcasters' control over program content and would presumptively violate the First Amendment. See, *e.g., Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 651 (1994) ("the FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations,"

and the agency "may not impose upon them its private notions of what the public ought to hear"). Given these serious constitutional considerations, the FCC should refrain from compelling broadcasters to deliver uniform, state-mandated messages about the DTV transition.

A singular mandate would be even more suspect at this time because the broadcast industry is already, on a wholly voluntary basis, committing very significant time and resources toward raising awareness of the DTV transition and providing viewers with the information they need about the transition. The government can supplement these voluntary efforts by using its own speech to reach the viewing public in a variety of ways and by supporting the extensive and flexible DTV public education plans formulated by broadcasters.

There is simply no need for the government to force all stations throughout the country to air state-mandated messages about the DTV transition. Such a mandatory, one-size-fits-all program would very likely be less effective than the broadcasters' more flexible DTV education plan. The broadcasters' voluntary plan appears better positioned to respond to the unique circumstances found in television markets throughout the nation.

The question of effectiveness notwithstanding, we urge the FCC to refrain from imposing mandatory PSAs, because such a requirement would compel broadcasters' speech in a way that clearly violates the First Amendment.

Sincerely,

Patrick D. Maines
President

Richard T. Kaplar
Vice President