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

In the Matter of
DTV Consumer Education Initiative
MB Docket No. 07-148

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REPORT AND ORDER

Adopted: February 19, 2008

Released: March 3, 2008

By the Commission: Chairman Martin issuing a statement; Commissioner Tate issuing a separate statement; Commissioner Copps concurring and issuing a separate statement; Commissioner McDowell approving in part, concurring in part and issuing a statement; and Commissioner Adelstein approving in part, dissenting in part and issuing a statement.

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I. INTRODUCTION

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

2. As explained in more detail below, we thus impose the following requirements in this Order. First, broadcasters must provide on-air information to their viewers about the DTV transition, by compliance with one of three alternative sets of rules, and must report those efforts to the Commission and the public. Second, multichannel video programming distributors (“MVPDs”) must provide monthly notices about the DTV transition in their customer billing statements. Third, manufacturers of television receivers and related devices must provide notice to consumers of the transition’s impact on that equipment. Fourth, DTV.gov Partners must provide the Commission with regular updates on their consumer education efforts. Fifth, companies participating in the Low Income Federal Universal Service Program must provide notice of the transition to their low income customers and potential customers. Sixth, the winners of the 700 MHz spectrum auction must report their consumer education efforts. Finally, we offer our assistance to the National Telecommunications and Information Agency (“NTIA”) in policing and enforcing the requirements of the digital converter box retail program. We find that these requirements are necessary to ensure that the American public is adequately prepared for the full-power digital transition, but that they will no longer be necessary after the full-power transition is fully complete. This Order therefore provides that these requirements will be in place for a limited time only.

II. BACKGROUND

3. Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.² As the National Consumers

¹ Deficit Reduction Act of 2005, Pub. L. No. 109-171, Title III, §§ 3002(a), 3003, 3004, 120 Stat. 21, 22 (“A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009.”). *See also* 47 U.S.C. § 337(e) and 47 U.S.C. § 309(j)(14).

² *See* Digital Television and Public Safety Act of 2005 (“DTV Act”), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”) (*codified at* 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009, as a new hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A). DTV Act § 3002(b) directs the Commission to “take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the (continued....)

League describes it, “[t]he transition to DTV is probably the most significant event for television-viewers since the invention of television itself. It is crucial for people to be aware of the change, understand its impact, and be able to make sound choices.”³ We agree, and the Commission has been actively engaged in DTV consumer education and outreach efforts since before the establishment of the hard full-power transition deadline. Our longstanding and ongoing efforts include a wide range of activities, both completed and planned.⁴ For instance, the Chairman recently announced the creation of a DTV Task Force, formalizing the relationships among the numerous Offices and Bureaus involved in the transition. The goal of the Task Force is to facilitate a smooth transition that minimizes the burdens on consumers while maximizing their opportunities to benefit from it. As an extension of existing coordination efforts, the Task Force will: meet regularly to discuss and direct ongoing DTV transition efforts, coordinate with other federal agencies, shares ideas, and address any problems that arise or appear imminent. The members of the Task Force will also meet regularly with various stakeholders from industry and federal, state, local, and tribal governments.

4. Representatives John D. Dingell, Chairman of the Committee on Energy and Commerce, and Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, recently wrote to the Commission to express interest in the pace and scope of consumer education about the full-power transition.⁵ As the Congressmen observed, “the Commission is particularly well suited to lead this effort given its existing expertise and resources.”⁶ They proposed a number of specific actions that they believe the Commission should take. As discussed above, many of these recommendations are already being actively pursued by the Commission. The Commission released a Notice of Proposed Rulemaking on July 21, 2007,⁷ requesting comment on the best means of creating a coordinated, national DTV consumer education campaign. Comments were due September 17, 2007, and reply comments were due October 1, 2007. We reviewed over 30 comments, 6 reply comments, and over 100 ex parte presentations and comments from a wide range of sources, including individuals, trade associations, broadcasters, and nonprofits.

III. DISCUSSION

5. Insofar as the actions referenced in the Letter require regulatory action by the

(Continued from previous page) _____

analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).” 47 U.S.C. § 309 Note. DTV Act § 3005(a) also created a coupon program to subsidize the purchase of digital-to-analog (“D-to-A”) converter boxes. *Id.*

³ Comments of National Consumers League at 1.

⁴ See generally, Letter from the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, to 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, sent June 18, 2007 (“Martin Response”) attached as Appendix E.

⁵ 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 (“Letter”) attached as Appendix D.

⁶ *Id.* at 3.

⁷ *DTV Consumer Education Initiative*, MB Docket No. 07-148, Notice of Proposed Rulemaking, 22 FCC Rcd 14091 (2007) (“DTV Consumer Education NPRM”).

Commission, we adopt those proposals. As a general matter, it suggests that “the Commission could use its existing authority to compel industry to contribute time and resources to a coordinated, national consumer education campaign.”⁸ We agree that the Commission should take whatever steps we can to promote a coordinated, national DTV consumer education campaign.⁹ Some industry commenters have objected to these requirements on the ground that the Commission has insufficient statutory authority to implement them. These objections are discussed in more detail below. As Telecommunication for the Deaf and Hard of Hearing, *et al.* observe, we have broad authority to require educational outreach efforts concerning the DTV transition.¹⁰ The Commission is statutorily required to promote the orderly transition of full-power stations from analog to digital television,¹¹ and we have exercised that mandate to, among other things, prevent the continued importation and interstate shipment of analog-only sets and to require retailers to label those analog-only sets they continue to legally sell.¹² Our statutory authority¹³ allows us to facilitate the transition by adopting rules requiring the dissemination of essential information about the transition.¹⁴

6. There is a clear and compelling need for educational efforts directed toward consumers. As Association of Public Television Stations (“APTS”) found in its most recent quarterly consumer survey on the DTV transition, a majority of Americans do not fully understand the transition.¹⁵ Moreover, as the Commission’s Consumer Advisory Committee (“CAC”) points out, a substantial number of Americans have not yet made the switch to digital. By the end of 2007, it was expected that only one-third of households would have a digital television.¹⁶ Of households that rely on over-the-air (“OTA”) broadcasts, only seven percent own a digital television.¹⁷ Furthermore, the households that principally rely on OTA broadcasts are the most vulnerable and arguably the most difficult to reach; almost half have annual incomes of less than \$30,000, and two-thirds are headed by someone over 50

⁸ Letter at 3.

⁹ As summarized in ¶ 2, *supra*.

¹⁰ Comments of Telecommunication for the Deaf and Hard of Hearing (TDHH) at 8-9.

¹¹ See *supra* note 2. See also, e.g., 47 U.S.C. §§ 336 note (requiring the Commission to assign paired digital television channels “to further promote the orderly transition to digital television”), 336(b) (expressing Congressional interest in the transition from analog to digital television and reading, in pertinent part, “[i]n prescribing the regulations required by subsection (a), the Commission shall ... (5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.”)

¹² *In the Matter of Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978 (2002), (“DTV Tuner Order”) (addressing DTV receiver standards and labeling requirements); *In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*; Second Report and Order, 22 FCC Rcd. 8776 (2007) (“Labeling Order”).

¹³ See Paragraphs 19-23, 28-29, 39-43, 47, 53-56.

¹⁴ See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (Commission’s authority under its general subject matter jurisdictional grant extends to matters “reasonably ancillary to the effective performance of the Commission’s various responsibilities”) (“*Southwestern Cable*”).

¹⁵ APTS “Over-the-Air Households Prefer Free Broadcast Television After DTV Transition” available at <http://www.pts.org/news/OTA-Study-January-08.cfm> (viewed Feb. 12, 2008).

¹⁶ Comments of the Federal Communication Commission’s Consumer Advisory Committee at 7 (citing Arnold, Thomas K. “DEG: 52 mil HDTV homes in U.S. by ‘08.” *The Hollywood Reporter*. July 18, 2007.). *But see*, Comments of CEA at 3 (prediction that, by the end of 2007, over half will have digital TVs).

¹⁷ Comments of CAC at 11.

years of age or someone for whom English is a second language.¹⁸ Thus, we must take immediate and effective action to ensure that viewers are informed of the effect that the full-power digital transition will have on them and the options that are available to them to make the transition to digital television without losing full-power television service. This Order focuses on actions that television broadcasters, MVPDs, telecommunications carriers, retailers, and manufacturers must take to inform consumers about the transition. Nonetheless, because of the national importance of this issue, we also strongly encourage radio broadcasters to engage in efforts to educate and inform their listeners. Such efforts could be an important complement to consumer outreach by other public and private sector groups between now and the transition.

A. Broadcaster Education and Reporting

7. The National Association of Broadcasters (“NAB”) and other broadcast industry commenters have argued that there is a public interest benefit in preserving some flexibility on the part of broadcasters to serve the needs of viewers in their widely divergent communities, and we agree.¹⁹ We therefore adopt rules that give both commercial and noncommercial broadcasters a choice of education and reporting requirements.²⁰ Furthermore, we acknowledge that the ongoing educational efforts of industry have made a notable impact on consumer awareness, and anticipate continuing effective and creative measures from the industry to increase viewer awareness of the full-power digital transition.²¹ As discussed throughout this *Order*, we find a broad-based consumer education mandate essential given the importance of consumer awareness to the digital transition, but we will allow broadcasters the flexibility to choose which of these different plans to follow.

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

9. The Commission’s education requirement will go into effect upon the effective date of the rules. Every full-power commercial broadcaster must participate in option One or Two, and noncommercial broadcasters must participate in option One, Two, or Three. Whichever Option is elected, every broadcaster must conduct consumer outreach and education pursuant to that set of rules. Under

¹⁸ *Id.* at 10 (citing 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)).

¹⁹ Comments of SBA at 7; Comments of NAB at 10-11.

²⁰ NAB Ex Parte of February 11, 2008; APTS Ex Parte of February 11, 2008.

²¹ NAB Ex Parte of January 31, 2008 (showing very high awareness of the transition).

each of the options, broadcasters must report on its educational and outreach activities by filing Form 388 with the Commission and placing it in the station's public file. Each broadcaster will elect the option with which it will comply no later than the first reporting deadline under the plans, by noting its chosen plan when it first files Form 388.²² Failure to comply with either the education or reporting requirements under any Option may result in enforcement action.

1. Broadcaster Education Option One

a. Option One Consumer Education Requirements

10. Broadcasters who opt to comply with this option will be required to regularly air a mix of PSAs and crawls, with increasing frequency as the full-power transition approaches, that explain the various important issues of the full-power transition and explain how viewers can find more information.²³ Specifically, a station must air one transition PSA, and run one transition crawl, in every quarter of every day. This requirement applies separately to a station's analog channel and its primary digital stream. This requirement will increase to two PSAs and crawls per quarter per day on April 1, 2008, and to three of each on October 1, 2008.²⁴ For the purposes of these education requirements, each broadcast day can be broken into four quarters; 6:01 am to 12:00 pm, 12:01 pm to 6:00 pm, 6:01 pm to 12:00 am, and 12:01 am to 6:00 am. Stations are required to air PSAs or crawls at various times in any given day part, and we expressly require that at least one PSA and one crawl per day be run during primetime hours.²⁵ We expect that broadcasters will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. In addition, we require that the transition PSAs be closed-captioned.²⁶

11. These requirements will expire for most broadcasters on March 31, 2009.²⁷ We will increase these requirements if we find, based on the overall progress of DTV consumer education, that it is necessary to revise the frequency, content or duration of the PSAs or crawls on a station-by-station basis, for a particular region, or for the country as a whole.

12. Crawls must run during programming for no less than 60 consecutive seconds across the bottom or top of the viewing area,²⁸ and be provided in the same language as a majority of the

²² Appendix C.

²³ A "crawl" is "text that advances very slowly across the bottom or top of the screen." See *In the Matter of Review of the Emergency Alert System*, 20 FCC 18625, 18657 note 222 (Rel. Nov. 10, 2005). See note 33, *infra*.

²⁴ This requirement is in line with the proposed minimums put forth by AARP, TDHH, and CaptionMax. Comments of AARP at 5; Comments of TDHH at 4; Comments of CaptionMax at 2.

²⁵ For the purposes of this item, "primetime" is defined as the hours between 8:00 pm and 11:00 pm in the Eastern and Pacific time zones, and between 7:00 pm and 10:00 pm in the Mountain and Central time zones.

²⁶ We recognize that our rules exempt PSAs that are shorter than ten minutes in duration from the captioning requirements. 47 C.F.R. § 79.1(d)(6). Due to the critical information of these PSAs, however, we expressly require that transition PSAs be closed captioned regardless of their duration, notwithstanding the exemption in 79.1(d)(6).

²⁷ This DTV education requirement will continue for any station that has requested or been granted an extension to serve less than its full authorized service area after March 31, 2009. Some broadcasters filed comments in the Third DTV Periodic describing circumstances that may prevent them from completing construction to reach their fully authorized service area by February 18, 2009. Any station that does not reach all of its pre-transition viewers on February 18, 2009, will be required to continue its education efforts until its request for extension has been withdrawn or denied, or until a granted extension has expired.

²⁸ The crawls should not block any closed captioning or emergency information, and any closed captioning or emergency information should not block DTV Transition-related crawls. *Cf.* 47 C.F.R. § 79.2(b)(3) (prohibiting closed captioning from blocking emergency information, and vice versa).

programming carried by the station. Although we do not dictate the exact content of the crawls, we find that, over the 60 second duration, they must repeat a message that conveys the following information:

- On February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may lose the signal being viewed unless the viewer takes action.
- That viewers can get more information by telephone or online, and how to do so.²⁹

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

13. Required PSAs must be at least 15 seconds.³⁰ Each PSA must provide, at a minimum, the same information as required for crawls, above. We acknowledge the creativity of the private sector, as noted by SBA,³¹ and do not mandate the form of PSAs other than to require that, over the course of a broadcaster's education campaign, they give more detail about the following subjects:³²

- what a viewer needs to do to continue watching the station, whether they are an OTA viewer or receive broadcast signals via their MVPD, and
- where appropriate, specific details about the station's transition: for example, shifts in service area, channel numbering changes, the addition of multicast and/or High Definition channels, timing,³³ etc.

14. Additionally, on-air outreach must contain no misleading or inaccurate statements.³⁴ We do not limit stations to these efforts. For example, certain stations may find that additional PSAs in languages other than those in which a majority of their programming is presented would be beneficial to their viewers; for other stations, multilingual announcements may not be needed.³⁵ Stations are free to use PSAs provided by outside sources such as NAB or networks, so long as their overall campaign touches on all the elements relevant to their particular transition. The flexibility of the rules we adopt today makes clear that we are focusing on Congress's command to promote an orderly full-power transition.³⁶

²⁹ For example, viewers could be given the option of calling the station at a number provided or going to www.DTV.gov, and/or could be directed that they can get more information about the converter box program by going to www.dtv2009.gov or calling the NTIA at 1-888-DTV-2009.

³⁰ Broadcasters are free to air additional PSAs that do not meet all these requirements, as long as the information included is accurate and not misleading.

³¹ Comments of SBA at 7. *See also* the National Association of Broadcaster's request for flexibility. Comments of NAB at 10-11.

³² Comments of Benton at 12 (urged PSAs to include information about the transition, benefits, options for consumers and set top box demonstrations); Comments of National Hispanic Media Coalition at 6 (detailing a schedule for progressively more detailed PSA information segments as the transition date nears); Comments of COAT at 8 (supporting a requirement that PSAs explain 'key elements' of the transition); Comments of Entravision at 4-5 (suggests airing PSAs during all dayparts, suggests particular content and information about boxes and coupon program).

³³ *See* note 27, *supra*.

³⁴ *See* 47 C.F.R. § 73.674(c)(3)(vi) in Appendix B, Amended Rules, and Section A in Appendix C, Broadcaster Reporting Form.

³⁵ *See, e.g.*, Reply of COAT at 9 and Comments of Lincoln Broadcasting at 2.

³⁶ 47 U.S.C. § 336 note.

15. The Letter suggested that the Commission consider using its regulatory authority to “require television broadcasters to air periodic public service announcements and a rolling scroll about the digital transition.”³⁷ We have adopted this requirement, while giving broadcasters significant latitude to determine the best way to present the essential information on the timing and nature of the full-power transition and how to continue receiving the station’s programming throughout and after the transition.³⁸

16. Most of the commenters who commented on this issue agreed with the Commission that broadcast consumer education efforts are the best way to reach viewers who will be most affected by the full-power transition, particularly those who rely primarily or exclusively on OTA television.³⁹ For example, one commenter states that PSAs should be the “*primary* focus for transition education efforts,” and that an education program including PSAs must be mandated to ensure public education “in a timely manner.”⁴⁰ It is also important not to simply rely on one form of on-screen education or the other. Crawls and PSAs convey information very differently, and reach different groups of people as a result. Given the growing use of personal video recorders and other devices that can be used for time-shifting and commercial skipping, many consumers might not be reached by education efforts, such as PSAs, that air only during programming breaks. At the same time, a crawl can not reach those viewers whose eyesight is not strong enough to read its comparatively small print, or who are not able to read at all. Using both methods will ensure that education efforts reach more viewers. Broadcaster commenters are generally in agreement regarding the importance of their role in consumer education; for instance, Entravision, a Spanish language broadcaster, supports mandatory PSAs.⁴¹ Even those broadcasters who oppose regulation in this matter say that, regardless of our decision here, they plan to engage in consumer outreach and education that “far exceed any requirements the FCC could or should impose,” because “the ability to reach *every household* is the foundation of broadcast television’s public interest and operational success.”⁴² A wide array of broadcaster activity is promised not just in this Commission docket, but also in testimony to Congress.⁴³

17. Despite commendable pledges by organizations like the State Broadcasters Association (“SBA”) and NAB, we find that regulatory action is the only way to ensure a sustained, nationwide,

³⁷ Letter at 3. We note that although the Letter refers to “scrolls,” commenters (including AARP, NAB, and APTS) understood this to refer to what in the closed captioning context we have called a “crawl.” Indeed, the National Hispanic Media Coalition, which strongly supports PSA requirements and calls for “Y2K-level consumer education efforts,” opposes vertical scrolls as unnecessary. Comments of NHMC at 3. For the sake of consistency and to reflect the generally understood intent of the proposal, we use the term “crawl” here. *See also* note 23, *supra*.

³⁸ This might be different because some stations have requested, in the Third DTV Periodic (MB Docket No. 07-91), that they be permitted to reduce or end their analog service on dates other than February 17, 2009. *See, e.g.*, Comments of Bahakel at 3 (early transition); Reply of APTS at 4 (early and late transition); Reply of NAB and MSTV at 5 (early transition); Reply of MSTV and NAB reply at 11 (late transition); Comments of The Association of Federal Communications Consulting Engineers at 6 (late transition); Comments of Red River Broadcast Co., LLC 4-5. *See also* Reply of Chris Llana at 2 (supporting these requests).

³⁹ National Hispanic Media Coalition at 1-2; Telecommunications Regulatory Board of Puerto Rico at 4; New York State Consumer Protection Board at 1; DTV Consumer Education NPRM at ¶5 (over the air programming is best way to educate consumers).

⁴⁰ Reply of Chris Llana at 3.

⁴¹ Comments of Entravision at 1.

⁴² Comments of the State Broadcasters Association (SBA) at 8, 2 (emphasis in original); *See also* Reply of NAB at 3 (citing SBA’s comments approvingly).

⁴³ *See generally*, Testimony of Marcellus Alexander, NAB Executive Vice President of Television, before the Committee on Aging, U.S. Senate (September 19, 2007).

station-by-station effort. As the Benton Foundation observes,⁴⁴ these organizations have no power to bind individual stations. We acknowledge and appreciate the leadership and coordination efforts of NAB, and anticipate continuing to work with it on additional voluntary efforts. At the same time, we are convinced that DTV consumer education needs to be a nationwide station-by-station effort. As SBA says, consumer education is “critical” because interruption of broadcast service to even a single home is “unacceptable.”⁴⁵ Our rules will ensure that the critical need for education is met in every market. NAB and APTS both argue that we can simply rely on the interests of all broadcasters in preserving their over-the-air audience, and that we therefore need not require any broadcaster education efforts.⁴⁶ While we agree that broadcasters have every incentive to prepare their viewers for the transition, a “baseline requirement” is necessary to ensure the public awareness necessary for a smooth and orderly transition. We have adopted NAB’s proposal as an alternative method by which stations can meet this baseline requirement.⁴⁷ As the CAC points out, there will be a number of contrary pressures on local broadcasters over the next 12 months.⁴⁸ For example, it is possible that the viewers most likely to be left behind due to an insufficient educational effort are the ones least demographically attractive to advertisers.⁴⁹ Finally, potential advertising revenue from such sources as presidential and other political campaigns may make it tempting, in the short run, not to devote advertising time to transition education.⁵⁰

18. APTS suggests that public television stations be exempt from any requirements because they have a good track record of informing the public and because they are limited in the time they have to air public service announcements.⁵¹ We disagree because the rules we impose are designed to complement efforts such as APTS’; if broadcasters are already engaging in these efforts, the rules will not be a burden. However, as with commercial stations, we have given noncommercial broadcasters the option to comply with our requirements via an alternative route.⁵²

19. *Statutory Authority.* NAB, alone among commenters, argues that the Commission does not have statutory authority to require that broadcasters inform their viewers of the full-power broadcast digital television transition.⁵³ NAB argues that Section 326 of the Act, prohibiting us from interfering with the right of free speech by broadcasters, prevents us from acting here absent a grant of authority that specifically mentions DTV consumer education PSAs and crawls.⁵⁴ We disagree. As discussed more fully in Section G, below, our actions here do not constitute an improper restriction on speech.⁵⁵ NAB also asserts an artificially narrow conception of the Commission’s statutory authority when it argues that we cannot act without a “specific statutory provision authorizing required PSAs and crawls, including

⁴⁴ Comments of Benton at 11.

⁴⁵ Comments of SBA at 2.

⁴⁶ Comments of NAB at 11; Comments of APTS at 5.

⁴⁷ NAB Ex Parte of February 11, 2008.

⁴⁸ Comments of CAC at 16.

⁴⁹ Comments of Benton at 11.

⁵⁰ *Id.*

⁵¹ Comments of APTS at 5.

⁵² APTS Ex Parte of February 11, 2008.

⁵³ Comments of NAB at 11-12; Reply of NAB at 5-6.

⁵⁴ Comments of NAB at 12.

⁵⁵ See Section G, *infra*.

content thereof.”⁵⁶ As noted above, Congress both mandated the digital transition and vested the Commission with the power to “prescribe such regulations as may be necessary for the protection of the public interest, convenience, and necessity” in connection with the digital transition.⁵⁷

20. Finally, broadcast licensees have a statutory obligation to “serve the public interest, convenience, and necessity.”⁵⁸ One can scarcely conceive a situation more illustrative of the “necessity” prong of this duty than the instant case, where certain viewers will cease having access to full-power broadcast services transmitted over the public airwaves on a date certain absent concerted informational efforts. There simply can be no national full-power digital broadcast transition if the very people who rely on broadcast television are unaware of it. As NAB acknowledges, “[t]he future of free-over-the air television depends upon a smooth transition.... For this to happen, the American public must understand what all-digital broadcasting means for them.”⁵⁹

21. Broadcasters must take some responsibility for educating the public that they are bound to serve. If a blizzard hits Chicago on February 18, 2009, all over-the-air viewers should be able to turn on their television and receive emergency information without missing a beat.⁶⁰ Educating viewers so that they have access to digital transmissions is a keystone of the transition which the FCC is statutorily required to effectuate, and broadcasters must play a central role in that process. In reviewing other regulations designed to advance the digital transition, the D.C. Circuit held in *Consumer Electronics Ass’n v. FCC*⁶¹ that “[g]iven Congress’ instruction to end analog broadcasts . . . and the Commission’s finding that [current trends were not such that the public would be ready for the transition], . . . the Commission reasonably determined to take action . . . so that the DTV transition may move at the pace required by Congress.”⁶² As in *CEA*, we must take action to ensure the orderly transition of broadcast service to digital and we have the statutory authority to do so.

22. Finally, the imposition here is similar to existing requirements for broadcaster station identification and broadcast of license renewal notices.⁶³ The change from analog to digital broadcasting is at least as fundamental to the operation of a station as the possession of a broadcast license, and of more practical import to viewers. Given the extremely minimal requirements for producing a compliant PSA or crawl and the indispensable role that television stations must play in educating their viewers in how they can continue to have access to full-power television service after the transition, it does not avail NAB to claim that these public notices are fundamentally different from other broadcast notice requirements because they are “furthering a government policy.”⁶⁴

23. The Commission, in a similar context, enforced broadcaster public interest obligations by requiring digital television stations to participate in the emergency alert system (“EAS”). In that

⁵⁶ Comments of NAB at 12.

⁵⁷ 47 U.S.C. § 303(r); § 336; see also *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956); *National Broadcasting, Inc. v. United States*, 319 U.S. 190, 218-20 (1943); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 137-8 (1940) (supporting the Commission’s authority to interpret the public interest standard on the Communications Act.)

⁵⁸ 47 U.S.C. §§ 303(r); 336; and 309(k).

⁵⁹ Comments of NAB at 2.

⁶⁰ See also Comments of Stephen Wong at 1.

⁶¹ *Consumer Electronics Ass’n v. FCC*, 347 F.3d 291 (D.C. Cir. 2003).

⁶² *Id.* at 301.

⁶³ See, e.g., Comments of Benton at 19 (citing 47 C.F.R. §§ 73.1201 and 73.3580).

⁶⁴ Reply of NAB at 5, note 15.

proceeding, NAB agreed with the Commission that participation in EAS was a natural extension of broadcaster public interest obligations.⁶⁵ The order noted that exemption from this requirement would not be in the public interest. It also noted that if participation in the Emergency Alert System were voluntary, some communities could be left without an EAS source, and such messages are too important to risk missing “because a person is tuned to the wrong channel.”⁶⁶ Similarly, in the case of the transition, an exemption from consumer education is contrary to the public interest because the public has a right to know how televisions will function after February 17, 2009. A voluntary program is inadequate because transition information is too important to risk that some viewers will lack the necessary information because the licensee serving them fails to provide that information in a timely fashion. If viewers see a blank screen on February 18, 2009, because they were not informed about the actions they needed to take to continue receiving television programming, they will effectively be deprived of access to all OTA television service -- including EAS.⁶⁷

b. Option One Reporting Requirements

24. A broadcaster choosing to comply with Option One will be required to electronically report its consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster’s public file and, if the broadcaster has a public website, on that website. These reports will be made available on the Commission’s website in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option One complete Form 388 and file it electronically in this docket (07-148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station’s public inspection file by that same date. Because of the limited duration of the full-power transition period, only a limited number of these quarterly reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station’s final quarter of mandated educational efforts, will be filed no later than April 10, 2009, for most stations. Stations that are required to continue educational efforts beyond March 31, 2009, must also continue to file these quarterly reports, up to and including the final quarter in which they have active educational requirements.⁶⁸

25. The Letter suggested that the Commission consider requiring “broadcast licensees and permittees to report, every 90 days, their consumer education efforts, including the time, frequency, and

⁶⁵ *Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625, 18633 (2005).

⁶⁶ *Id.* at 18634.

⁶⁷ The Commission imposed a similar requirement upon broadcasters pursuant to the Children’s Television Act (“CTA”). The First Report and Order in the Children’s Television proceeding required broadcasters to “air three hours per week of core programming...or air a package of programming that demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming.” *See generally, In the Matter of Policies and Rules Concerning Children’s Television Programming*, MM Docket No. 93-48, *Revision of Programming Policies for Television Broadcast Stations*, Report and Order, 11 FCC Rcd 10660 (1996). The Commission ordered the regulation because it found that market forces were insufficient to ensure that commercial stations would provide children’s educational and information programming. The Commission concluded that “requiring broadcasters to serve the educational and informational needs of their child audience was clearly within the scope of the long recognized obligation of broadcasters to serve the public interest.” *Id.* In this proceeding, the circumstances are similar. For the purpose of educating the national viewing audience who will not, on their own, inform themselves, the Commission must regulate all broadcasters. As some commenters admit, certain consumer education efforts do not serve their economic interests. *See, for example, EchoStar at 4* (billing inserts are expensive); *APTS at 11* (paperwork associated with government mandates is expensive); *US Telecom Association at 1-2* (billing inserts useless and expensive).

⁶⁸ *See note 23, supra.*

content of public service announcements aired by each station in a market, with civil penalties for noncompliance.”⁶⁹ It also suggested that the Commission consider imposing “interim requirements for detailing a broadcaster’s consumer education efforts in the required local public inspection file, such as by including coverage about the digital transition in the issues/programs list compiled every three months or by making announcements in local newspapers or on-air similar to public notice requirements for new stations or license renewal.”⁷⁰

26. Broadcasters generally oppose this reporting requirement.⁷¹ As discussed above, broadcaster education efforts are a central part of consumer education concerning the transition. We require reporting to enforce these consumer education initiatives and ensure that the necessary efforts are underway. As the National Hispanic Media Coalition observes, “[t]here is no satisfactory alternative to this reporting.”⁷² As with the Children’s Television Programming requirements, self-reporting allows broadcasters to verify for themselves that they are fulfilling their obligations.⁷³ Furthermore, because of the importance of these education requirements and the relatively short time frame of the full-power transition, the Commission needs to be able to monitor compliance with and enforce those obligations in a way that is not prohibitively cost- and time-consuming. Self-reporting is the most effective way to do this.

27. As to the form and format of the reports, the AARP and others take the position that the reports should include detailed information about each airing of a PSA and its content, and should be filed quarterly.⁷⁴ The Benton Foundation suggests that the reports be filed in electronic form, and also be placed in the broadcaster’s public file.⁷⁵ As noted, we decline to require a specific format, but all of the above information must be included.

28. Given our statutory authority to require the PSAs and crawls, as discussed above, we also have authority to require broadcasters to document and report their compliance efforts. We have statutory authority under the Communications Act to require broadcasters to provide information about their programming to the public and the Commission.⁷⁶ Providing information to the public about their transition education efforts will make broadcasters more accountable for their public interest obligation to promote the continued availability of free television programming and ensure a smooth transition. Sections 303(r) and 4(i) of the Communications Act provide ample authority for the reporting requirement because providing this information will help us ensure broadcasters are acting as public trustees⁷⁷ and the Commission is fulfilling its duty to oversee the full-power transition.⁷⁸ In addition,

⁶⁹ Letter at 3.

⁷⁰ *Id.*

⁷¹ Comments of SBA at 8; Comments of North Carolina Association of Broadcasters at 1; Comments of APTS at 11. *But see* APTS Ex Parte of February 11, 2008 (proposing a reporting requirement for noncommercial broadcaster’s education efforts).

⁷² Comments of National Hispanic Media Coalition (“NHMC”) at 7.

⁷³ *Policies and Rules Concerning Children’s Television Programming*, MM Docket No. 93-48, Report and Order, 11 FCC Rcd. 10660, ¶68 (1996) (“Children’s Television Programming Order”).

⁷⁴ Comments of AARP at 7; Comments of the Telecommunications Regulatory Board of Puerto Rico (“PR”) at 4; Comments of NHMC at 7.

⁷⁵ Comments of Benton at 15-16, 22.

⁷⁶ 47 U.S.C. §§ 303(r); 336; *See also United States v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956); *National Broadcasting, Inc. v. United States*, 319 U.S. 190, 218-20 (1943); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 137-8 (1940).

⁷⁷ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 383 (1969).

Section 4(k) of the Communications Act expressly authorizes the Commission to collect information and data “as may be considered of value in the determination of questions connected with the regulation of interstate ... radio communication and radio transmission of energy” to assist the Congress in its normal oversight responsibilities.⁷⁹ Determining whether the American public is adequately informed and educated about the full-power DTV transition is of significant concern to Congress, and the reporting requirements will assist the Commission in gathering this important information. In addition, these reporting requirements are “necessary for the protection of the public interest, convenience, and necessity” in connection with the digital transition because they will assist the Commission in assessing consumer understanding of the transition and in determining whether adjustments to the educational efforts must be made.⁸⁰ Further, without broadcasters reporting their efforts, the public and the Commission will be unable to determine at renewal time whether stations have complied with the consumer education rules.⁸¹ Indeed, these requirements are similar to the long-standing issues/programs list requirements which require stations to list every three months their programs that have provided the most significant treatment of community issues and retain these lists in their public file.⁸² As with on-air identifiers, our broad authority under the Communications Act to carry out the public interest requirement permits us to have broadcasters provide public service announcements to effectuate the public interest standard. Although we have not previously required broadcasters to air public service announcements, we have required stations to broadcast certain on-air announcements,⁸³ to give public notice in a local newspaper for certain broadcast applications,⁸⁴ and to make available certain information in a public file.⁸⁵

29. Similarly, the Commission’s First Report and Order⁸⁶ pursuant to the Children’s Television Act⁸⁷ relied on the authority cited above and the Commission’s authority to enforce the public interest obligations of broadcasters⁸⁸ to impose upon broadcasters mandatory quarterly⁸⁹ children’s programming reporting requirements. Here, the reporting requirement is much more lenient, as it is for a finite period of time.

2. Broadcaster Education Option Two

a. Option Two Consumer Education Requirements

30. We find that the record also supports permitting broadcasters to choose to comply with
(Continued from previous page) _____

⁷⁸ See note 10, *supra*.

⁷⁹ See 47 U.S.C. § 154(k)(1) (directing the Commission to make an annual report to Congress which “shall contain”... “such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of interstate and foreign wire and radio communication and radio transmission of energy”).

⁸⁰ 47 U.S.C. § 336(b)(5).

⁸¹ 47 U.S.C. § 309(k).

⁸² See 47 C.F.R. § 73.3526(e)(11).

⁸³ See 47 C.F.R. §§ 73.1201 (requiring station identification); 73.1212 (requiring sponsorship identification).

⁸⁴ See *id.* § 73.3580.

⁸⁵ See *id.* §§ 73.3526, 73.3527.

⁸⁶ Children’s Television Programming Order, 11 FCC Rcd 10660.

⁸⁷ 47 U.S.C. §§ 303(a), (b) and 394.

⁸⁸ Children’s Television Programming Order, 11 FCC Rcd at para. 7.

⁸⁹ *Id.* at 10663.

our rules by following the alternative plan offered by the National Association of Broadcasters.⁹⁰ Under this option, a broadcaster must air an average of sixteen transition PSAs per week, and an average of sixteen transition-related crawls, snipes, and/or tickers⁹¹ per week, over each quarter through the transition period between 5:00 am and 1:00 am. No PSAs or crawls, snipes, and/or tickers aired between the hours of 1:00 am and 5:00 am will qualify as compliant for the purposes of these education requirements. Over the course of each calendar quarter, one fourth of all PSAs and crawls, snipes, and/or tickers must air between 6:00 pm and 11:35 pm, Eastern and Pacific, and between 5:00 pm and 10:35 pm, Central and Mountain. These requirements will expire for most broadcasters on March 31, 2009.⁹² This requirement applies separately to a station's analog channel and its primary digital stream. As with broadcasters electing Option One, we expect that broadcasters electing Option Two will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. And, as under Option One, these transition PSAs must be closed-captioned.⁹³ Stations are free to use PSAs produced in-house or provided by outside sources such as NAB or the networks.

31. Required PSAs must be at least 30 seconds in length. A broadcaster may, however, choose to air two PSAs of no less than 15 seconds in length in place of a single PSA of at least 30 seconds in length.⁹⁴ Stations will also air at least one 30-minute informational program on the digital television transition between 8:00 am – 11:35 pm on at least one day prior to February 17, 2009.

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

- *Graphic Display.* A graphic super-imposed during programming content that reminds viewers graphically there are “x number of days” until the full-power transition. They will be visually instructed to call a toll-free number and/or visit a Website for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.
- *Animated Graphic.* A moving or animated graphic that ends up as a countdown reminder. It would remind viewers that there are “x number of days” until the full-power transition. They will be visually instructed to call a toll-free number and/or visit a Website for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.
- *Graphic and Audio Display.* Option #1 or option #2 with an added audio component. The length of time will vary from 5 to 15 seconds, at the discretion of the station.
- *Longer Form Reminders.* Stations can choose from a variety of longer form options to

⁹⁰ NAB Ex Parte of February 11, 2008.

⁹¹ *Id.*

⁹² This DTV education requirement will continue for any station that has requested or been granted an extension to serve less than its full authorized service area after March 31, 2009. Some broadcasters filed comments in the Third DTV Periodic describing circumstances that may prevent them from completing construction to reach their fully authorized service area by February 18, 2009. Any station that does not reach all of its pre-transition viewers on February 18, 2009 will be required to continue its education efforts until their request for extension has been withdrawn or denied, or until a granted extension has expired.

⁹³ We recognize that our rules exempt PSAs that are shorter than ten minutes in duration from the captioning requirements. 47 C.F.R. § 79.1(d)(6). Due to the critical information of these PSAs, however, we expressly require that transition PSAs be closed captioned regardless of their duration.

⁹⁴ Broadcasters are free to air additional PSAs that do not meet all these requirements, as long as the information included is accurate and not misleading.

communicate the countdown message. Examples might include an “Ask the Expert” segment where viewers can call in to a phone bank and ask knowledgeable people their questions about the transition.⁹⁵ The length of these segments will vary from 2 minutes to 5 minutes, at the discretion of the station (Some stations may also choose to include during newscasts DTV “experts” who may be asked questions by the anchor or reporter about the impending February 17, 2009, deadline).

b. Option Two Reporting Requirements

33. We also find that the record supports a requirement that broadcasters electing Option Two electronically report their consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster’s public file, just as under Option One. These reports will be made available on the Commission’s website in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option Two complete Form 388 and file it electronically in this docket (07-148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station’s public inspection file by that same date. Because of the short remaining duration of the full-power transition period, only a limited number of these quarterly reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station’s final quarter of mandated educational efforts, will be filed no later than April 10, 2009, for most stations. Stations that are required to continue educational efforts beyond March 31, 2009, must also continue to file these quarterly reports up to and including the final quarter in which they have active educational requirements.⁹⁶

3. Broadcaster Education Option Three

a. Option Three Consumer Education Requirements

34. This option is open only to noncommercial broadcasters. We find that the record also supports permitting some broadcasters to choose to comply with our rules by following the alternative plan offered by the APTS.⁹⁷ Under this option, a broadcaster must air 60 seconds per day of on-air consumer education, in variable timeslots, including at least 7.5 minutes per month between 6:00 pm and 12:00 am. Beginning May 1, 2008, this requirement doubles, and beginning November 1, 2008, it increases again, to 180 seconds per day and 22.5 minutes per month between 6:00 pm and midnight. The transition PSAs must be closed-captioned.⁹⁸ These requirements will expire for most broadcasters on March 31, 2009.⁹⁹ Stations will also air a 30-minute informational program on the digital television

⁹⁵ NAB states that “[t]his has been successfully used by medical doctors who are often called on during the flu season, post-traumatic events or other local health related concerns. Adding the “expert” ensures people instinctively know they can rely on the advice and action suggested by the expert.” NAB Ex Parte of February 11, 2008.

⁹⁶ See note 27, *supra*.

⁹⁷ APTS Ex Parte of February 12, 2009.

⁹⁸ We recognize that our rules exempt PSAs that are shorter than ten minutes in duration from the captioning requirements. 47 C.F.R. § 79.1(d)(6). Due to the critical information of these PSAs, however, we expressly require that transition PSAs be closed captioned regardless of their duration.

⁹⁹ This DTV education requirement will continue for any station that has requested or been granted an extension to serve less than its full authorized service area after March 31, 2009. Some broadcasters filed comments in the Third DTV Periodic describing circumstances that may prevent them from completing construction to reach their fully authorized service area by February 18, 2009. Any station that does not reach all of its pre-transition viewers on February 18, 2009, will be required to continue its education efforts until their request for extension has been withdrawn or denied, or until a granted extension has expired.

transition between 8:00 am – 11:35 pm on at least one day prior to February 17, 2009. This requirement applies separately to its analog channel and its primary digital stream.¹⁰⁰ As with broadcasters electing Option One, we expect that broadcasters electing Option Three will air these DTV PSAs in addition to, and not in lieu of, PSAs on other issues of importance to their local communities. Stations are free to use PSAs produced in-house or provided by outside sources such as NAB or the networks. And, as under Option One, these transition PSAs must be closed-captioned.¹⁰¹

b. Option Three Reporting Requirements

35. We also find that the record supports a requirement that noncommercial broadcasters electing Option Three electronically report their consumer education efforts to the Commission on a quarterly basis, and place these reports in the broadcaster's public file, just as under Option One. These reports will be made available on the Commission's website in a centralized, searchable database. For each quarter of required consumer education, we require that broadcasters electing Option Three complete Form 388 and file it electronically in this docket (07-148) by the tenth day of the succeeding calendar quarter, with a copy placed in the station's public inspection file by that same date. Because of the short remaining duration of the full-power transition period, only a limited number of these quarterly reports will be required. The first, covering the first quarter of 2008, must be filed no later than April 10, 2008, and the last, covering a station's final quarter of mandated educational efforts, will be filed no later than April 10, 2009, for most stations. Stations that are required to continue educational efforts beyond March 31, 2009, must also continue to file these quarterly reports up to and including the final quarter in which they have active educational requirements.¹⁰²

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

36. Low-power ("LP") broadcast stations are not required to cease broadcasting in analog as of February 17, 2009. Although some already have or plan to independently transition to digital-only broadcasting, many of these stations will continue to broadcast in analog after the conclusion of the full-power transition. Thus, many consumers may receive some programming in digital and some programming in analog after the transition date. Those consumers with analog televisions who are reliant on over-the-air broadcasting will need to acquire a digital to analog converter box to continue watching television after the transition. Recently, concerns have been raised, by the Community Broadcasters Association among others,¹⁰³ about the fact that the majority of Coupon Eligible Converter Boxes ("CECBs") certified by NTIA are not capable of "passing through" analog signals from the antenna to a connected set.¹⁰⁴ As a result, LP stations (including Class A and translator stations) that continue to broadcast in analog will not be viewable to OTA viewers who rely on a converter box, unless they use one of the boxes with pass-through capability.

37. This issue was raised before the Commission after the record in this rulemaking had closed, and we therefore do not have a record on it. Accordingly, we have an insufficient basis upon

¹⁰⁰ *I.e.*, a station must fully comply for its analog channel, and fully comply for its primary digital stream. Compliant transition-related education pieces may air simultaneously on a station's analog channel and its primary digital stream, but are not required to do so.

¹⁰¹ We recognize that our rules exempt PSAs that are shorter than ten minutes in duration from the captioning requirements. 47 C.F.R. § 79.1(d)(6). Due to the critical information of these PSAs, however, we expressly require that transition PSAs be closed captioned regardless of their duration.

¹⁰² See note 27, *supra*.

¹⁰³ Petition of CBA

¹⁰⁴ As of February 20, 2009, four of approximately forty certified boxes have pass-through capability.

which to adopt consumer education requirements relating to this issue in the instant proceeding.¹⁰⁵ Nonetheless, given that converter boxes are already on the shelves of many retailers, and coupons are in the process of being mailed to consumers, we recognize the urgency of the problem for those consumers who may have difficulty viewing these low power stations. We therefore urge all LP broadcasters, but particularly those that plan to continue analog-only broadcasting, to immediately begin educating their viewers about this issue. For instance, such stations could notify their viewers that: (1) they are watching a low-power broadcast station that, unlike full-power stations, may continue to offer analog service after February 17, 2009, and (2) viewers who plan to purchase a converter box in order to view digital signals should buy a model with analog pass-through capability in order to continue watching that station. The LP station could direct viewers to the NTIA converter box coupon program, and in particular the NTIA listing of certified converter boxes.¹⁰⁶ We also urge industry and our private and public sector partners to do what they can to educate consumers generally about this situation, and to assist in the effort to ensure that no American loses a signal due to the transition.

B. Multichannel Video Programming Distributor Customer Bill Notices

38. We will require that all MVPDs (*e.g.*, DBS carriers, cable operators, open video system operators, private cable operators, etc.) provide notice of the full-power DTV transition to their subscribers in monthly bills or billing notices.¹⁰⁷ The notice must be provided as a “bill stuffer” or as part of an information section on the bill itself. It must be noticeable, and state that on February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may be unable to display full-power broadcast programming unless the viewer takes action. It must also note that viewers can get more information by going to www.DTV.gov or calling the MVPD at a number provided, and more information about the converter box program by going to www.dtv2009.gov or calling the NTIA at 1-888-DTV-2009. The notice may also, at the MVPD’s discretion, provide contact information for the DTV Transition Coalition. The message should be provided in the same language or languages as the bill, and explain clearly what impact, if any, the transition will have on the subscriber’s access to MVPD service.¹⁰⁸ The most important information may be to note that sets not connected to an MVPD service may need additional equipment (*i.e.* converter box) or may have to be replaced. MVPDs must begin including these monthly notices 30 days after the effective date of the rules and must continue including them monthly through March 2009. Beginning approximately one year before the full-power transition and running through March 2009 ensures that subscribers will be exposed to educational messages throughout the remainder of the transition, and will have sufficient opportunity to act on them.¹⁰⁹

¹⁰⁵ The Commission intends to issue a Notice of Proposed Rulemaking on potential consumer education requirements for low power television stations as part of an upcoming proceeding.

¹⁰⁶ A current list of coupon-eligible converter boxes is available at https://www.ntiadtv.gov/cecb_list.cfm. The converter box models that have analog pass-through capability are noted on the list with an asterisk next to them. In addition, NTIA will mail a list of current coupon-eligible converter boxes, noting with an asterisk those that have analog pass-through capability, to each household that receives converter box coupons. Viewers can also check with their retailer to determine whether a particular converter box has analog pass-through capability.

¹⁰⁷ To the extent that a given customer does not receive paper versions of either a bill or a notice of billing, that customer must be provided with equivalent monthly transition notices in whatever medium they receive information about their monthly bill.

¹⁰⁸ For example, DBS carriers must provide additional notice to all subscribers who do not receive local broadcast signals via satellite. This additional notice would explain the steps that these subscribers would need to take to continue receiving broadcast signals, in particular the necessary steps if the subscriber relies on a tuner integrated into the DBS carrier’s set-top box.

¹⁰⁹ These regulations do not supersede existing notice requirements that govern cable, such as 47 C.F.R. §§ 76.1601, 76.1603, and 76.1622.

39. The Letter suggested that the Commission consider requiring, “as a license condition or through customer service or other consumer protection or public interest requirements, all multichannel video programming distributors (MVPDs) to insert periodic notices in customer bills that inform consumers about the digital television transition and their customers’ future viewing options, with civil penalties for noncompliance.”¹¹⁰ These notices would go to all MVPD subscribers and provide them with information about the full-power transition generally and about how it will affect their service specifically. The New York State Consumer Protection Board is primarily concerned that MVPD subscribers understand what effects, if any, the transition will have on their service.¹¹¹ The Benton Foundation not only supported this proposal, as “an optimal way to reach consumers that value television service,” but also proposed a requirement that MVPDs run PSAs themselves.¹¹² The National Cable and Telecommunications Association states in its comments that the cable industry has not only committed to exceed the Commission’s proposal, but those of the commenters.¹¹³ The cable industry has committed to include DTV transition notices in subscriber bills, on a monthly basis beginning in 2008.¹¹⁴ Indeed, these commitments have been made not only to the Commission, but also to the Commerce Committees of both the United States House of Representatives and the United States Senate.¹¹⁵ NCTA argues that, given these commitments, the Commission should not impose any requirements for MVPD DTV education efforts.

40. Of course, we welcome the efforts of NCTA and its members. We note, however, that the commitments of NCTA do not bind its member cable operators, and that, of course, it does not speak for all MVPDs. DIRECTV and EchoStar, while pledging active education efforts both for their subscribers and for OTA viewers state that they have no plans to provide periodic notices with bills.¹¹⁶ Verizon, similarly, opposes the use of notices in bills, on the grounds that they would be expensive, ineffective, and potentially counterproductive.¹¹⁷ We disagree with Verizon because the overall record in this proceeding indicates that bill notices would contribute significantly to consumer education efforts. Such notices would reach viewers who are engaged with television viewing and well positioned both to act on the information regarding any OTA sets they may have and to serve as a source of information for others.

¹¹⁰ Letter at 3.

¹¹¹ Comments of New York State Consumer Protection Board at 2.

¹¹² Comments of Benton at 16-17; *see also* Comments of CAC at 22; Comments of Coalition of Organizations for Accessible Technology (COAT) at 10.

¹¹³ Comments of NCTA at 2. *See also*, Comments of Verizon at 7; Reply of NTCA at 6.

¹¹⁴ *Id.* at 6. Specifically, as to periodic bill notices, they state that “[i]n 2008, educational messages and reminders about the transition will be sent to all cable customers through monthly statements on invoices and ‘bill stuffers’ in cable bills.” *See also*, Letter from Kyle McSlarrow, President and CEO, NCTA, to the Honorable John D. Dingell, Chairman of the Committee on Energy and Commerce, the Honorable Joe Barton, Ranking Member of the Committee on Energy and Commerce, the Honorable Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, and the Honorable Fred Upton, Ranking Member of the Subcommittee on Telecommunications and the Internet, U.S. House of Representatives, dated September 6, 2007, at 2 (“McSlarrow House Letter”).

¹¹⁵ *See generally*, McSlarrow House Letter and Letter from Kyle McSlarrow, President and CEO, NCTA, to the Honorable Daniel K. Inouye, Chairman of the Committee on Commerce, Science and Transportation, and the Honorable Ted Stevens, Vice Chairman of the Committee on Commerce, Science and Transportation, U.S. Senate, dated September 6, 2007 (“McSlarrow Senate Letter”).

¹¹⁶ Comments of EchoStar at 3; Comments of DIRECTV at 3.

¹¹⁷ Comments of Verizon at 6.

41. Several industry commenters object that the Commission does not have statutory authority to impose the notice requirement.¹¹⁸ We conclude, however, that we have ancillary authority to adopt notice requirements for Multichannel Video Programming Distributors under Titles I, III, and VI of the Communications Act of 1934, as amended (“Act”).¹¹⁹ Courts have long recognized that, even in the absence of explicit statutory authority, the Commission has authority to promulgate regulations to effectuate the goals and provisions of the Act if the regulations are “reasonably ancillary to the effective performance of the Commission’s various responsibilities” under the Act.¹²⁰ The Supreme Court has established a two-part ancillary jurisdiction test: (1) the subject of the regulation must be covered by the Commission’s general grant of jurisdiction under Title I of the Communications Act; and (2) the regulation must be reasonably ancillary to the Commission’s statutory responsibilities.¹²¹ The requirements we adopt here regulate the disclosure obligations of companies providing services that fall within the Commission’s jurisdiction under Titles I, III, and VI, advance our statutory obligation to promote the digital transition, and serve the public interest. We conclude, therefore, that we have ancillary jurisdiction to adopt DTV transition notice requirements in this proceeding.

42. For the most part, commenters do not argue that the Commission lacks jurisdiction over either the DTV transition or MVPDs.¹²² Rather, they argue that requiring MVPDs to provide billing notices regarding the full-power DTV transition is not reasonably ancillary to our authority over either broadcast television or MVPDs. Verizon and NTCA both argue that there is no connection between multichannel distribution and the full-power broadcast television transition, and that this would be a broadcast regulation imposed on parties not engaged in broadcasting. On the contrary, MVPDs are an inextricable part of the television market. Both DBS and cable have mandatory carriage requirements, and all MVPDs have requirements concerning retransmission of broadcast signals.¹²³ Without the stations and viewers affected by this transition, MVPDs would be in a very different business. The Commission is statutorily obligated to promote the orderly transition to digital television, “a critical step in the evolution of broadcast television.”¹²⁴ Further, the Commission is authorized to “make such rules and regulations . . . as may be necessary in the execution of its functions,” and to “[m]ake such rules and

¹¹⁸ See, e.g., Comments of USTA at 11; Comments of Verizon at 15.

¹¹⁹ 47 U.S.C. §§ 151, 152(a), 154(i), 154(o), 301, 303(r), 303(s), 336, 532, 534, 535, 542, 573.

¹²⁰ *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (upholding Commission regulation of cable television systems as a valid exercise of ancillary jurisdiction). See also *Rural Tel. Coalition v. FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988) (upholding Commission authority to establish a “Universal Service Fund” in the absence of specific statutory authority as ancillary to FCC responsibilities under sections 1 and 4(i) of the Act); *GTE Serv. Corp. v. FCC*, 474 F.2d 724, 731 (2d Cir. 1973) (“even absent explicit reference in the statute, the expansive power of the Commission in the electronic communications field includes the jurisdictional authority to regulate carrier activities in an area as intimately related to the communications industry as that of computer services, where such activities may substantially affect the efficient provision of reasonably priced communications service”).

¹²¹ See *American Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005) (“*ALA*”).

¹²² But see USTA’s explication of the Commission’s authority over transition education, discussed in paragraph 35, *infra*.

¹²³ 47 U.S.C. §§ 338, 534.

¹²⁴ *2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, 13825 (2003). See, e.g., 47 U.S.C. §§ 336 note (requiring the Commission to assign paired digital television channels “to further promote the orderly transition to digital television”), 336(b) (expressing Congressional interest in the transition from analog to digital television and reading, in pertinent part, “[i]n prescribing the regulations required by subsection (a), the Commission shall . . . (5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.”).

regulations . . . not inconsistent with law, as may be necessary to carry out the provisions of this Act . . .¹²⁵

43. The rules we adopt today advance these statutory mandates and serve the public interest. USTA argues that the connection between such notices and the Commission's DTV transition authority is weak, because "the customers who would receive those notices *do not rely on the broadcast signals that will cease on the transition date.*"¹²⁶ Many of those very customers do in fact rely on broadcast signals for at least some of the televisions in their homes.¹²⁷ Accurate and timely communication of the impending change from analog to digital transmission is a critical disclosure for all consumers. Not only will every DTV-educated consumer accelerate the spread of knowledge about the full-power transition, but as described in COAT's comments, many MVPD subscribers will in fact be directly impacted by the transition, even if only because they have some OTA sets in their home.¹²⁸ Furthermore, broadcast channels carried on a system will tend to be clearer and crisper as a result of the broadcaster switch to digital,¹²⁹ and every station broadcasting programming in HD, not just those carried pursuant to retransmission consent, will be available in HD.¹³⁰ As discussed above, over half of consumers still are not aware of the impending full-power digital transition.¹³¹ Clearly, voluntary industry efforts to date have not been sufficient to ensure consumer awareness of the upcoming transition to digital television. Such consumer awareness is critical to our missions of promoting public safety and an orderly digital transition.¹³²

44. Exercising ancillary jurisdiction to adopt DTV transition notice requirements for MVPDs is consistent with prior exercises of the Commission's authority. The Commission previously relied on its authority under the Act and the ACRA to impose an analog-only labeling requirement in order to promote the orderly transition to digital television.¹³³ In addition, the Commission recently relied on its ancillary jurisdiction in requiring interconnected Voice over Internet Protocol ("VoIP") service providers

¹²⁵ *Id.* at §§ 154(i), 303(r).

¹²⁶ Comments of USTA at 15 (emphasis in original).

¹²⁷ See Comments of Benton at note 9 (citing May 2007 findings from Leichtman Research Group, Inc. that 9% of TV sets in cable households are broadcast-only, and 19% of TV sets in DBS households are broadcast-only, representing approximately 35 million television sets). Compare Comments of CEA at 4 (reporting that there are roughly 5.5 million households subscribing to cable and satellite that have at least one set receiving over-the-air signals and there are a total of 9.5 million over-the-air television sets in these households). See also, *In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9485 (2007) (in connection with the 2006 Competition Report, NAB reported that an additional 23.5 million television sets in 14.7 million MVPD households remain unconnected to the MVPD service).

¹²⁸ Comments of COAT at 9-10.

¹²⁹ See, generally, www.DTV.gov.

¹³⁰ *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Third Report and Order and Third Further Notice of Proposed Rule Making, FCC 07-170 (Rel. Nov. 30, 2007) ("Cable Viewability Order").

¹³¹ Reply of APTS at 1.

¹³² See *Consumer Electronics Ass'n v. FCC*, 347 F.3d 291, 301-02 (D.C. Cir. 2003) (recognizing Congressionally mandated digital transition and Commission determination of consumer expectations that "the television they purchase . . . be able to receive over-the-air broadcast signals," and approving resulting Commission action to mandate DTV tuner phase-in).

¹³³ Labeling Order, 22 FCC Rcd. at ¶¶ 15-20.

to distribute to their subscribers stickers or labels warning if E911 service may be limited or unavailable, and to instruct subscribers to place them on or near the equipment used in conjunction with the interconnected VoIP service.¹³⁴ The Commission also has numerous other labeling and disclosure requirements designed to further its statutory objectives and to protect consumers.¹³⁵ In sum, therefore, we conclude that we have ancillary authority to adopt DTV transition notice requirements for MVPDs.

45. USTA makes two additional arguments about the limits of our ancillary jurisdiction in this case. First, it argues that because NTIA was given some express authority over DTV transition education, it “creates a strong presumption” that Congress did not mean for the Commission to have any authority in this area at all.¹³⁶ On the contrary, Congress had no need to give the Commission specific authority over any one element of the transition, because as discussed above we have general authority to promulgate rules to advance the transition.¹³⁷ USTA also argues, again almost in passing, that the Commission “may” not be permitted to exercise ancillary jurisdiction in any manner that could be seen as content-related regulation of speech. In support of this argument, USTA cites only the 2002 D.C. Circuit decision that struck down the Commission’s video description requirements.¹³⁸ *MPAA v. FCC* can not, however, be reasonably read to impose such a sweeping rule. The Court’s decision focuses on the inability of the Commission to rely on Section 1 of the Act as a source of authority for restricting programming content. In this case, Section 1 is not the primary source of the Commission’s authority, and programming content is not at issue. More to the point, the *MPAA* Court pointed to a clear Congressional directive that specifically spoke to video description and limited the Commission’s sphere of authority to the creation of a report. Here, on the other hand, Congress has endowed the Commission with general authority to prescribe regulations that will “promote the orderly transition to digital television.”¹³⁹

C. Consumer Electronics Manufacturer Notices

46. We require that parties that manufacture, import, or ship interstate television receivers and devices designed to work with television receivers (including digital-to-analog converter boxes like the NTIA Coupon Eligible Converter Boxes) include information with those devices explaining to consumers what effect, if any, the full-power DTV transition will have on their use. This information must be included with all devices shipped, beginning on the effective date of these rules, until March 31, 2009. As with the notices included in MVPD bills, the information may be in any form preferred by the manufacturer. It must be noticeable, contain the minimum information about the full-power transition described in paragraph 12, above, and explain clearly what impact, if any, the transition will have on the use of the device. For example, with receivers with a digital OTA tuner, one sufficient form of notice would be a sticker on the outside of the packaging that reads: “Digital Television Transition Notice: This

¹³⁴ *IP-Enabled Services*, 20 FCC Rcd 10245, 10271 ¶ 48 (2005).

¹³⁵ See, e.g., *2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885 (2003) (adopting technical, labeling and encoding rules to permit television sets to be built with “plug and play” functionality for one-way digital cable services); *Truth-in-Billing and Billing Format*, 20 FCC Rcd 6448 (2005) (mandating that billing practices, including line items, be truthful and non-misleading), *vacated on other grounds, NASUCA v. FCC*, 457 F.3d 1238 (11th Cir. 2006); 47 C.F.R. § 20.19 (labeling requirements for hearing-aid compatible mobile handsets).

¹³⁶ Comments of USTA at 13. The very Congressional inquiries that initiated this proceeding, however, make it clear that Congress does now and has always considered DTV transition education to be an integral part of the DTV transition which the Commission is leading. See, generally, Letter.

¹³⁷ Paragraph 5, *supra*.

¹³⁸ Comments of USTA at 14-15 (citing *Motion Picture Association of America, Inc. v FCC*, 309 F.3d 796 (D.C. Cir. 2002)).

¹³⁹ 47 U.S.C. § 336(b)(5), Note to section 336.

television receiver will display over the air programming after the end of full-power analog broadcasting on February 17, 2009. Some older television receivers may need a converter box to display over the air digital programming, but should continue to work as before for some purposes (e.g., for watching LPTV, Class A, or translator stations still broadcasting in analog, watching pre-recorded movies, or playing video games). For more information, please call [the manufacturer], go to www.DTV.gov, or, for converter box information, go to www.dtv2009.gov or call the NTIA at 1-888-DTV-2009.”

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

48. The Letter suggested that the Commission consider requiring “manufacturers to include information with television receivers and related devices about the transition, with civil penalties for noncompliance.”¹⁴⁰ The only commenter to oppose this proposal, LG, conceived of it applying only to “television sets,” and argued that the existing Labeling Order already resolves this issue.¹⁴¹ On the contrary, the Labeling Order’s requirements apply only to sets without a digital receiver, which are no longer being manufactured for the US market.¹⁴² Therefore the two sets of requirements do not overlap at all. The Benton Foundation suggests that the included information should be standardized by the Commission.¹⁴³

49. No commenter challenged the Commission’s statutory or constitutional authority to impose this requirement. As in the analog receiver labeling order,¹⁴⁴ our authority to impose this requirement is ancillary to our responsibilities under the Communications Act and the All Channel Receivers Act. An electronic device that is dependent for its use, in whole or in part, on over-the-air reception of television broadcast channels, is an “apparatus” “incidental to . . . transmission” of television broadcasts and, therefore, within the scope of our Title I subject matter jurisdiction.¹⁴⁵ As discussed in more detail in paragraphs 5 and 19-23, above, the Commission is statutorily obligated to promote the orderly transition to digital television. Ensuring that consumers know how it will affect their devices, and why they may suddenly stop working or change their functionality, is essential to achieving that goal.

D. DTV.gov Partner Consumer Education Reporting

50. We require DTV.gov Transition Partners to report their consumer education efforts, as a condition of continuing Partner status.¹⁴⁶ Reports should be filed into the record of this proceeding on a quarterly basis, beginning on April 10, 2008. Additionally, individual copies of the reports should be sent, via electronic mail or hard copy format, to the Chief and to the Chief of Staff of the Commission’s Consumer and Governmental Affairs Bureau, as well as sent electronically to dtvreporting@fcc.gov. This is in line with the Letter’s suggestion that the Commission consider requiring “partners identified on the Commission’s digital television Web site to report their specific consumer

¹⁴⁰ Letter at 3.

¹⁴¹ Comments of LG Electronic USA, Inc. (“LG”) at 7.

¹⁴² Labeling Order, 22 FCC Rcd. at ¶ 14; *see generally*, DTV Tuner Order, 17 FCC Rcd at 15978.

¹⁴³ Benton at 18.

¹⁴⁴ Labeling Order, 22 FCC Rcd. 8776.

¹⁴⁵ 47 U.S.C. § 153(33).

¹⁴⁶ Listed at www.dtv.gov/partners.html.

outreach efforts.”¹⁴⁷

51. We appreciate the efforts made so far by our DTV.gov Partners to keep us apprised of their consumer education and outreach activities. As we move closer to the full-power transition date, the Commission will necessarily be accelerating its efforts, and further emphasizing its role as the coordinator and clearinghouse for DTV transition education. As NAB and MSTV observe, “coordination is critical to ensure that, in addition to messaging, industry, government agencies and other stakeholders are not either: (1) unnecessarily duplicating consumer education efforts or (2) failing to target key segments of the American population. The need for coordination is further underscored by the limited financial resources of the Commission.”¹⁴⁸ No commenters opposed this proposal, and several supported it.¹⁴⁹ Furthermore, NAB and MSTV describe the DTV Transition Coalition as already committed to regularly updating the Commission. Therefore, moving forward we will require that DTV.gov Partners provide us with quarterly updates on their specific consumer outreach efforts, and we anticipate that we will use this full range of information to work with Partners on future education efforts. Any Partner listed that fails to work with the Commission in this process may lose Partner status and be removed from the DTV.gov Partners page.

E. Consumer Electronics Retailer Training and Education

52. We adopt the suggestion in the letter that the Commission work “with NTIA to require retailers who participate in the converter box coupon program to detail their employee training and consumer information plans and have Commission staff conduct spot inspections to ascertain whether such objectives are being met at stores.”¹⁵⁰ A number of commenters are in favor of this proposal. The Telecommunications Regulatory Board of Puerto Rico supports it because “direct contact with customers will play a crucial role in educating people on the DTV transition.”¹⁵¹ We agree that retailers can play a central role, and we plan to work with NTIA to ensure that retailers are fulfilling their commitment to the converter box program. As the Consumer Electronics Retailers Coalition has explained, consumer electronics retailers independently planned to engage in extensive employee training and consumer outreach regarding the transition.¹⁵² These outreach efforts began early, as Radio Shack explains, with a standardized tip sheet developed and made available for distribution by all retailers.¹⁵³ Several large retailers, including Circuit City, Target, and Best Buy, assured the Commission of their intention to engage in extensive outreach, and have since demonstrated an admirable degree of focus, ingenuity, and dedication to the needs of viewers as they approach the digital transition.¹⁵⁴ Enforcement Bureau field agents will regularly visit participating retailer stores across the country to assess their employee training

¹⁴⁷ Letter at 4.

¹⁴⁸ Comments of NAB & MSTV at 14-15.

¹⁴⁹ *Id.*; Comments of Benton at 21; Comments of Nick Supuran at 1.

¹⁵⁰ Letter at 4.

¹⁵¹ Comments of Telecommunications Regulatory Board of Puerto Rico at 5.

¹⁵² Comments of CERC at 12-13.

¹⁵³ Comments of Radio Shack at 6. This conforms to the request of Commenter Nick Supuran. The Commission also has an independently developed DTV buying tip sheet that is available to consumer or for distribution by retailers. The Commission developed a DTV Tip Sheet in collaboration with CEA and CERC in 2004 and has updated the text as necessary. The Tip Sheet is available on www.DTV.gov (<http://www.dtv.gov/dtvtipsheet.pdf>) and has been distributed to retailers.

¹⁵⁴ Circuit City ex parte (filed January 29, 2008); Target ex parte (filed January 29, 2008); Best Buy ex parte (filed January 22, 2008).

and consumer education efforts and whether the retailers' objectives are being met at stores. Through ongoing and close coordination, the Enforcement Bureau will provide the results of these site visits to NTIA for review and appropriate action. We appreciate and encourage these efforts on the part of retailers, particularly participants in the NTIA converter box program.

F. Other Proposals

1. Federal Universal Service Low-Income Program Participant Notices

53. We will require that all eligible telecommunications carriers ("ETCs") that receive federal universal service funds provide DTV transition information in the monthly bills of their Lifeline/Link-Up customers.¹⁵⁵ Similar to the requirements for MVPDs, the notice must be provided as a "bill stuffer" or as part of an information section on the bill itself. It must be noticeable, and state that on February 17, 2009, full-power analog broadcasting will end, and analog-only televisions may be unable to display full-power broadcast programming unless the viewer takes action. It must also note that viewers can get more information by going to www.DTV.gov, and more information about the converter box program by going to www.dtv2009.gov or calling the NTIA at 888-DTV-2009. The notice may also, at the ETC's discretion, provide contact information for the DTV Transition Coalition. The notice should be provided in the same language or languages as the bill. If the ETC's Lifeline/Link-Up customer does not receive paper versions of either a bill or a notice of billing, then that customer must be provided with equivalent monthly transition notices in whatever medium they receive information about their monthly bill. Finally, ETCs that receive federal universal service funds must provide this same basic information as part of any other Lifeline or Link-Up publicity campaigns.¹⁵⁶ The customer bill notice requirement will run concurrently with the MVPD bill notice requirement (i.e., from 30 days after the effective date of these rules through March 2009), and the publicity requirement will run for the same period.

54. The Letter suggested that the Commission "require, as an interim measure, that telecommunications carriers that receive funds under the Low Income Federal universal service program ... notify each of their low income customers of the digital transition and include such a notice in their required Lifeline and Link-Up publicity efforts."¹⁵⁷ The strongest support for this requirement came from the New York State Consumer Protection Board, which suggested that "all telecommunications providers notify their low-income customers of the transition through their current Lifeline outreach efforts."¹⁵⁸ The Benton Foundation and the Commission's Consumer Affairs Committee both suggest that we should "encourage" telecommunications companies to engage in this type of outreach, particularly with their low income customers, but they do not support a mandate. Several commenters oppose the requirement, arguing that the Commission lacks a sufficient nexus to exercise ancillary jurisdiction. All argue that this would be unconstitutional compelled speech. We disagree with these commenters for the reasons explained in Section G, below.¹⁵⁹ Verizon also argues that this type of notice would confuse subscribers

¹⁵⁵ Lifeline and Link-Up (Lifeline/Link-Up) are universal service low-income programs. Lifeline provides low-income consumers with discounts off of the monthly cost of telephone service for a single telephone line in their principal residence, while Link-Up provides low-income consumers with discounts off of the initial costs of installing telephone service. *See Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306, para. 4 (2004); 47 C.F.R. Part 54, Subpart E (Universal Service Support for Low-Income Consumers).

¹⁵⁶ Sections 54.405(b) and 54.411(d) of the Commission's Rules require all ETCs to publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for those services. 47 C.F.R. §§ 54.405(b), 54.411(d).

¹⁵⁷ Letter at 4.

¹⁵⁸ Comments of New York State Consumer Protection Board at 2.

¹⁵⁹ *See infra* section III.G.

rather than educate them,¹⁶⁰ and that these notices would lead to flooding phone company call centers with questions about the DTV transition. Finally, NTCA claims that the IRFA is deficient because it does not mention LECs. We reject NTCA's argument. The Commission provided sufficient notice, under the APA, that regulation of LECs was being considered.¹⁶¹ Furthermore, the Commission's FRFA has considered the possible economic impact on LECs as required under the RFA.¹⁶² We agree with the consumer advocates, and adopt the above proposals.

55. We conclude that we have authority under Title I of the Act to impose the DTV Consumer Education requirements on ETCs that receive federal universal service funds.¹⁶³ Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated¹⁶⁴ and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."¹⁶⁵ Both predicates for ancillary jurisdiction are satisfied here.

56. First, Section 2(a) of the Act grants the Commission subject matter jurisdiction over [the services provided by] telecommunications carriers.¹⁶⁶ Section 254(e) provides that only eligible telecommunications carriers are eligible to receive federal universal service funds.¹⁶⁷ Therefore, all ETCs that receive federal universal service funds are telecommunications carriers, and as a result, are the subject of the Commission's subject matter jurisdiction.

57. Second, our analysis requires us to evaluate whether imposing the DTV Consumer

¹⁶⁰ Comments of Verizon at 7. See also Comments of Qwest at 2 and Reply of NTCA at 2.

¹⁶¹ Notice at ¶ 17.

¹⁶² See Appendix A, *infra*.

¹⁶³ Through the Lifeline/Link-Up Program, an American consumer is able to receive a discount on either their monthly telephone service or the installation of a telephone service if the consumer meets certain financial income thresholds. See *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306, para. 4 (2004).

¹⁶⁴ See *Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968), the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) ("*Midwest Video I*") (quoting *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) ("*CATV First Report and Order*"). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979) ("*Midwest Video II*").

¹⁶⁵ *Southwestern Cable*, 392 U.S. at 178.

¹⁶⁶ Section 2(a) of the Act states that the Act applies "to all interstate and foreign communication by wire or radio . . . and to all persons engaged within the United States in such communication . . ." 47 U.S.C. § 2(a).

¹⁶⁷ See 47 U.S.C. § 254(e).

Education requirements is reasonably ancillary to the effective performance of the Commission's various responsibilities. We find that Sections 309 and 1 of the Act provide the requisite nexus. Section 309 requires the Commission to "take such actions as are necessary . . . to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009" ¹⁶⁸ In a survey on the DTV transition, the GAO found that over-the-air households are more likely to have lower incomes than cable or satellite households and that approximately 48 percent of exclusive over-the-air viewers have household incomes less than \$30,000. ¹⁶⁹ The Commission already has in place the Lifeline/Link-Up programs that provide discounts off the initial installation and monthly costs of telephone service to millions of low-income consumers. ¹⁷⁰ Because the DTV transition will greatly affect lower income households and the Lifeline/Link-Up programs already serve this same demographic, we have an already established communication path that can be used to further the success of the DTV transition. By communicating with these lower income households, we ensure that all Americans will have the knowledge they need in order to prepare for the DTV broadcast transition. We therefore find that the extension of the DTV Consumer Education requirements to ETCs that receive federal universal service funds and are required to advertise to low-income consumers is reasonably ancillary to the effective performance of our duty to ensure the success of the DTV transition under the Digital Television and Public Safety Act of 2005.

58. Further, Section 1 of the Act charges the Commission with responsibility for making available "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . for the purpose of *promoting safety of life and property* through the use of wire and radio communication."¹⁷¹ In light of our statutory mandate to clear the broadcast spectrum for public safety use,¹⁷² it is important that the Commission take all steps necessary to ensure that the DTV transition occurs without delay. Further, Americans' reliance on their televisions for emergency alerts through the country's Emergency Alert System¹⁷³ requires that we ensure that all Americans have the ability to receive emergency notifications through their televisions. If Americans are unable to receive this potential life-saving information because they are unaware of the DTV broadcast transition, this might result in tragic consequences. Therefore, ensuring that all Americans receive notice of the upcoming DTV transition, including those that have been identified as at risk of not receiving the necessary information, is a critical step to achieving our statutory mandate to promote public safety. Thus, we conclude that extending the DTV Consumer Education requirements to ETCs that receive federal universal service funds is "reasonably ancillary to the effective performance of [our] responsibilities"¹⁷⁴ under Sections 309 and 1 of the Act, and "will 'further the achievement of long-established regulatory goals'"¹⁷⁵ to ensure the

¹⁶⁹ See 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), available at <http://www.gao.gov/new.items/d05258t.pdf>.

¹⁷⁰ See Wireline Competition Bureau, FCC, *Trends in Telephone Service Report*, Table 19.9 (Feb. 2007) (estimating that more than 7.1 million people paid reduced rates under the Lifeline program in 2005, and more than 1.7 million people paid reduced charges under the Link-Up program since 2005).

¹⁷¹ 47 U.S.C. § 151 (emphasis added).

¹⁷² See 47 U.S.C. § 309(j)(14)(B)(i)(II).

¹⁷³ See 47 C.F.R. § 11.1 *et seq.* EAS is a national public warning system that, together with other emergency notification mechanisms, is part of an overall public alert and warning system. See *Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625, 18627, para. 5 (2005).

¹⁷⁴ *Southwestern Cable*, 392 U.S. at 178.

¹⁷⁵ *Midwest Video I*, 406 U.S. at 667-68 (quoting *CATV First Report and Order*, 20 FCC 2d at 202).