

# Client Alert

Latham & Watkins Corporate Department

## FCC Mandates Wide-Ranging Digital Television Transition Education Initiatives

On March 3, 2008, the US Federal Communications Commission (FCC) released a Report and Order (the Order) mandating that a wide range of companies across the communications and consumer electronics industry engage in educational initiatives leading up to the February 17, 2009 digital television (DTV) transition.<sup>1</sup> On that date, all full-power US television stations will cease broadcasting in analog format, relying instead on digital broadcast signals. The DTV transition will enable more efficient use of broadcast spectrum, both improving the quality of broadcast services and freeing up spectrum for other services, including wireless broadband applications. There are millions of households, however, that continue to rely on the analog over-the-air broadcast television services that will soon be discontinued.

Through the education mandates in its Order, the FCC seeks to ensure that viewers are informed of how the DTV transition will affect them. For example, households with analog television sets can continue viewing broadcast signals after the transition is complete by obtaining a converter box (for which the federal government is providing up to two \$40 coupons per household) or by subscribing to a cable or satellite television service. The FCC will announce the effective date for these

new educational requirements after the Order is approved by the Office of Management and Budget.<sup>2</sup>

### The Order Imposes Broad Obligations on Communications Companies, Manufacturers and Retailers

The FCC's new DTV education mandates sweep broadly across the communications industry, applying not only to broadcasters, but also to equipment manufacturers and retailers, and even to companies whose services will not be affected by the transition.<sup>3</sup> Specifically, the FCC has imposed educational obligations on: (i) MVPDs (whose video services will not be affected by discontinuance of analog over-the-air transmissions); (ii) telecommunications carriers (in their role as providers of non-video services to low-income households); and (iii) winners of the 700 MHz spectrum auction (whose services will not commence until after the DTV transition is complete and who may never provide any video services).<sup>4</sup> In a separate statement accompanying the Order, Commissioner McDowell echoed First Amendment and other legal concerns raised by commenting parties, stating that "the nexus between our

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governmental purpose and the means to achieve that purpose are quite remote."<sup>5</sup>

In addition, in the aftermath of the Order, the consumer electronics industry has been seeking additional time to implement the Order's requirement to include educational materials along with television receivers and devices designed to work with television receivers.<sup>6</sup> The concern is that they will not be able to comply with the Order's requirements by the anticipated deadline. Moreover, because an increasing number of electronics products are capable of connecting to television receivers, the electronics industry is concerned that the scope of electronics devices covered by the Order is vague and overbroad.<sup>7</sup>

## Summary of Specific Education Requirements

### Obligations of Broadcasters

The Order requires that broadcasters transmit a combination of public service announcements (PSAs) and text "crawls," and engage in other education efforts throughout the broadcast day, based on one of three options described in the following text. Commercial broadcasters must choose between Options 1 and 2, while non-commercial broadcasters may choose any of the three options. The new DTV education mandates are *in addition to*, not in lieu of, PSAs aired by the broadcaster on other issues of importance to the broadcasters' local communities.<sup>8</sup> The DTV education requirements will expire for most broadcasters on March 31, 2009, although they will remain in place for broadcasters that have requested or been granted extensions of time to complete their transition beyond that date.<sup>9</sup> Along with the specific education requirements, each broadcaster must file a quarterly report on its DTV education and outreach activities.

### Broadcast Education Option 1

If the broadcast station chooses Option 1, it must air (i) one PSA and one crawl regarding the DTV transition in every quarter of every day through March 30, 2008; (ii) two PSAs and two crawls in every quarter of every day from April 1, 2008 through September 30, 2008; and (iii) three PSAs and three crawls in every quarter of every day from October 1, 2008 through March 31, 2009.<sup>10</sup> The crawls must run for no less than 60 consecutive seconds.<sup>11</sup> The crawl must convey the date of the transition and the fact that analog-only televisions may lose the signal being viewed unless the viewer takes action. In addition, the crawl must describe how to obtain further information by telephone and online.<sup>12</sup> The Order provides latitude with respect to the form of the PSAs, but specifies that they must be at least 15 seconds in length, include the same types of information required for the crawl, and provide certain additional details regarding specific station's transition.<sup>13</sup>

### Broadcast Education Option 2

If the broadcast station chooses Option 2, proposed by the National Association of Broadcasters, it must air an average of 16 PSAs and an average of 16 "crawls, snipes, and/or news tickers" each week.<sup>14</sup> The PSAs and crawls/snipes/tickers must run between 5:00 am and 1:00 am.<sup>15</sup> Furthermore, over the course of a calendar quarter, one-fourth of the PSAs and crawls/snipes/tickers must air between 6:00 pm and 11:35 pm Eastern and Pacific time, and between 5:00 pm and 10:35 pm Central and Mountain time.<sup>16</sup> These requirements will expire for most broadcasters on March 31, 2009.<sup>17</sup> The PSAs must be at least 30 seconds in length (although the broadcaster may air two 15-second PSAs in place of a single 30-second PSA).<sup>18</sup> Stations must also air at least one 30-minute informational program on the DTV transition between 8:00 am and 11:35 pm before February 17, 2009.<sup>19</sup>

Broadcasters choosing Option 2 must broadcast a 100-day countdown to the transition. Each day during the 100-day countdown, the station must air either a static or animated graphic (with or without sound) that reminds viewers of the number of days until the transition and instructs viewers to call a toll-free number or visit a Web site for details.<sup>20</sup> The broadcaster may choose a longer format option, such as an "Ask the Expert" television segment, to communicate the countdown message during the course of the 100 days.<sup>21</sup>

### **Broadcast Education Option 3**

Option 3, proposed by Association of Public Television Stations (APTS), is available only to noncommercial broadcasters.<sup>22</sup> Stations that choose Option 3 must air (i) 60 seconds per day of consumer education every day through April 30, 2008 (with 7.5 minutes each month between 6:00 pm and 12:00 am); (ii) 120 seconds per day May 1, 2008 through October 31, 2008 (with 15 minutes each month between 6:00 pm and 12:00 am); and (iii) 180 seconds per day November 1, 2008 through March 31, 2009 (with 22.5 minutes each month between 6:00 pm and 12:00 am).<sup>23</sup> Stations also must air a 30-minute information program on the DTV transition, between 8:00 am and 11:35 pm, at least once before February 17, 2009.<sup>24</sup>

### **Bill Stuffer Requirements for MVPDs and Telecommunications Carriers**

The Order requires MVPDs and telecommunications carriers that participate in the Federal Universal Service Low-Income Program to provide educational materials regarding the DTV transition in their monthly bills.<sup>25</sup> The information must be noticeable, inform the customer of the transition and provide details on resources available for obtaining more information.<sup>26</sup> The notice requirement begins 30 days after

the effective date of the new rules and runs through March 2009.<sup>27</sup>

### **Obligations of Electronics Manufacturers, Importers and Shippers to Include DTV Information with Consumer Electronics Products**

Manufacturers, importers and interstate shippers of television receivers and devices designed to work with television receivers must include information with those devices explaining what effect, if any, the transition will have on the devices' use and informing the customer of resources available for obtaining additional information.<sup>28</sup> The requirement applies to "all electronic devices that are designed to be connected to, and are dependent on, television receivers," including DVD players and recorders, VCRs, set-top-boxes and personal video recorders.<sup>29</sup> The information must be included beginning on the effective date of the new rules and continues through March 2009.<sup>30</sup>

### **Spot Inspections of Electronics Retail Stores**

The FCC plans to work with the National Telecommunications and Information Administration (NTIA) to require retailers that participate in the DTV converter box coupon program to detail their employee training and consumer information plans.<sup>31</sup> Moreover, FCC Enforcement Bureau field agents will regularly visit participating retail stores across the US to assess employee training and education efforts, and will provide the results of these inspections to NTIA "for review and appropriate action."<sup>32</sup>

### **Reporting Requirements for 700 MHz Auction Winners DTV.gov Partners**

Winning bidders in the 700 MHz spectrum auctions must detail what, if any, DTV transition education efforts

they are conducting. The report must be filed quarterly, with the first report due by the 10th day of the first calendar quarter following initial grant of the license.

Similarly, those entities listed on the DTV.gov Web site as DTV transition "Partners" must report their consumer education efforts as a condition of continuing their Partner status.<sup>33</sup> Reports are to be filed quarterly beginning April 10, 2008.<sup>34</sup>

**Endnotes**

<sup>1</sup> *DTV Consumer Education Initiative*, FCC 08-56, MB Docket No. 07-148 (rel. Mar. 3, 2008) (*DTV Order*). Low-power broadcast stations are not required to cease broadcasting in analog as of February 17, 2009. Thus, consumers relying on low-power broadcast stations may continue to receive some programming in analog format. Consumers who wish to view digital and analog programming on their analog television sets will need a digital converter box that will allow pass-through of analog signals.

<sup>2</sup> *Id.* ¶ 72.

<sup>3</sup> *Id.* ¶ 2.

<sup>4</sup> *Id.* ¶¶ 65-66.

<sup>5</sup> *Id.*, Statement of Commissioner Robert M. McDowell, Concurring in Part.

<sup>6</sup> See, e.g., Letter from Julie M. Kearney, Senior Director and Regulatory Counsel, Consumer Electronics Association, to Kevin J. Martin, Chairman, FCC, MB Docket No. 07-148 (filed Mar. 6, 2008).

<sup>7</sup> *Id.*

<sup>8</sup> *DTV Order*, ¶¶ 10, 30, 34.

<sup>9</sup> See, e.g., *id.* ¶ 11 & n.27.

<sup>10</sup> *Id.* ¶ 10. The education obligations may be extended if the broadcaster requests an extension of time for compliance.

<sup>11</sup> *Id.* ¶ 12.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* ¶ 13.

<sup>14</sup> *Id.* ¶ 30.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* The education obligations may be extended if the broadcaster requests an extension of time for compliance.

<sup>18</sup> *Id.* ¶ 31.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ¶ 32.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* ¶ 34.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* ¶¶ 38, 53.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* ¶ 46.

<sup>29</sup> *Id.* ¶ 47.

<sup>30</sup> *Id.* ¶ 46.

<sup>31</sup> *Id.* ¶ 52.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* ¶ 50.

<sup>34</sup> *Id.*

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