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May 24, 2007

The Honorable Kevin J. Martin, Chairman
The Honorable Michael J. Copps, Commissioner
The Honorable Jonathan S. Adelstein, Commissioner
The Honorable Deborah Taylor Tate, Commissioner
The Honorable Robert M. McDowell, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Martin and Commissioners Copps, Adelstein, Tate, and McDowell:

With the February 17, 2009, deadline for the digital television transition drawing near, representatives from industry, public interest groups, and the Federal Government must work together to ensure that millions of American television sets do not go dark. The Committee on Energy and Commerce has long known the benefits of transitioning to digital television, but now it is time to get the job done, and done correctly. If implemented successfully, the transition from broadcast television to digital service will free up valuable spectrum to enhance public safety communications. It may also bring consumers an array of new, digital broadcast video services, and it will reclaim spectrum that, if allocated wisely, will enhance wireless competition and spur new wireless broadband deployment and innovation.

A critical component for achieving a successful digital television transition is consumer education. Recognizing that the government mandated the transition to digital broadcasting, it is the Government's responsibility to take the lead in ensuring that consumers across the country are aware of the transition and its implications.

We are concerned about a number of matters associated with the digital transition.

First, the present lack of leadership, direction, and focus at the Federal level is jeopardizing the transition.

The Committee notes that the Commission recently adopted rules requiring consumer electronics retailers to inform consumers of television equipment being sold with analog-only tuners by displaying a government-mandated "consumer alert" near the device. Beyond this relatively small step, however, we have yet to see emerge from the Commission any articulation

or movement toward a comprehensive consumer education program, with a unified message, a clear chain of command, concrete and measurable goals, and mechanisms for oversight and accountability. We are concerned that to date, the Commission's efforts have been limited to the creation of an Internet web site and passive participation in industry coalition meetings.

This concern was highlighted in Chairman Martin's recent written testimony before the Subcommittee on Telecommunications and the Internet when the Chairman failed to mention the digital television transition at all. In the Commission's recent appropriations request to Congress, the Commission asked for a mere $1.5 million to inform 300 million American consumers about the digital television transition. In contrast, Berlin, Germany, spent approximately $984,000 to educate a population of 3.4 million about a similar transition. The Commission provided no explanation for how these funds would be spent, nor did the Commission describe any other efforts that it intends to undertake which do not require additional funding. Moreover, Chairman Martin recently stated that he believed the National Telecommunications and Information Administration (NTIA), rather than the Commission, has primary responsibility for consumer education regarding the digital television transition.

We are concerned that the apparent lack of direction and focus will lead to needless confusion, leaving millions of Americans overly reliant on the good graces of industry to inform them of the steps they need to take to ensure their continuing access to free, over-the-air local television after February 17, 2009.

Second, the Commission is the lead agency for digital transition and consumer education, and as such, has important responsibilities.

While NTIA must play a central role in educating consumers about the converter box coupon program, there are many facets of the digital television transition about which consumers must be informed, over and above the availability of converter box coupons. It is the Commission that has primary responsibility among Federal agencies for the overall digital television transition—to lead in consumer education about the transition. This is particularly the case because the Commission has regulatory power over industries, which the Commission can use to develop and manage the educational campaign that is sorely needed.

Thus, with less than eight months remaining before the converter box coupons become available and less than two years before the analog cutoff deadline, we are troubled that the vast majority of the public is still unaware that their analog television sets are in jeopardy of going dark, yet the Commission appears to be counting on others to lead consumer education efforts. While we applaud the commitments of organizations such as the National Association of Broadcasters, the National Cable and Telecommunications Association, the Consumer Electronics Association, the Consumer Electronics Retailers Association, the Association of Public Television Stations, and the Leadership Conference on Civil Rights to develop a coordinated consumer education campaign, we recognize that ultimately these are, for the most part, trade associations that cannot compel their members to undertake consumer education efforts; any efforts remain purely voluntary.

Third, the Commission must immediately implement a national consumer education campaign.

The time has come for the Commission to assume responsibility for developing, implementing, and overseeing a public outreach and consumer education campaign about the digital television transition. In addition to its regulatory authorities, the Commission is particularly well suited to lead this effort given its existing expertise and resources. Indeed, the Commission already has an entire bureau dedicated to consumer education and outreach, it chairs or participates in numerous advisory committees and related intergovernmental task forces, it holds field hearings across the country, and it has extensive experience overseeing efforts to facilitate transitions through technological change.

A prime example of such an effort was the Commission's successful campaign to help the telecommunications industry overcome the "Y2K" problem. The Commission initiated this campaign, which also faced a hard deadline, about two years before that deadline. The Commission assigned a Commissioner to lead this effort. In addition, the Commission developed a campaign that included advocacy and outreach—including letters, media relations, and a speaker's bureau—along with monitoring and assessment through mandatory and voluntary industry surveys, participation in industry forums, and information sharing. Similar efforts should be undertaken for the digital television transition.

Utilization of Existing Commission Authority

There are a number of steps within the Commission's current authority, which the Commission is at liberty to take, post-haste. The coordinated efforts of individual Commissioners could achieve maximum public awareness through the full range of communications activities across various geographic regions of the country.

Given that the Commission has requested very little funding for its own consumer education efforts, the Commission could use its existing authority to compel industry to contribute time and resources to a coordinated, national consumer education campaign. Among the initiatives the Commission could undertake using its existing authority are: (1) to require, 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; (2) to require broadcast licensees and permittees to report, every 90 days, their consumer education efforts, including the time, frequency, and content of public service announcements aired by each station in a market, with civil penalties for noncompliance; (3) to require manufacturers to include information with television receivers and related devices about the transition, with civil penalties for noncompliance; (4) to 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; and (5) to establish an advisory committee or other digital television working group to consult with State and local governments, low-income assistance program providers, educational institutions, community groups, public interest groups and other interested parties, to provide ongoing advice to the Commission about its public outreach efforts and to develop progress reports on private sector consumer education efforts.

The Commission also should consider using its regulatory authority to require television broadcasters to air periodic public service announcements and a rolling scroll about the digital transition, as the Government Accountability Office (GAO) found a similar effort was a critical component of Berlin, Germany's successful digital transition. In addition, the Commission could impose 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/program 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.

Moreover, given that GAO identified low-income populations as particularly affected by the transition yet difficult to reach, the Commission could require, as an interim measure, that telecommunications carriers that receive funds under the Low Income Federal universal service program to 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. In addition, given the significant stake of 700 MHz auction winners in a successful transition, the Commission could require those entities to report their specific consumer outreach efforts.

We view these initiatives as the floor, not the ceiling, of any consumer education campaign, so we encourage the Commission to think creatively about other mechanisms within its existing authority to educate consumers.

Utilization of Commission Resources

We specifically urge Chairman Martin to direct the use of Commission resources creatively and expansively in support of a national consumer education and outreach campaign. For example, the Commission could: (1) conduct periodic consumer outreach programs and distribute coupon applications through its regional field offices; (2) ensure that its Public Safety and Homeland Security Bureau involves local emergency responders and public safety entities in consumer outreach and coupon distribution; (3) utilize its Office of Communications Business Opportunities to conduct outreach to small, minority-owned and female-owned businesses; (4) conduct targeted outreach through its Disability Rights Office; (5) develop and implement an outreach component to each of the Commission's advisory committees, including the Consumer, Federal Diversity, and Intergovernmental Advisory Committees; (6) implement working groups with State commissions, Tribes and other Federal agencies to develop consumer outreach plans; (7) assure that its Office of Legislative Affairs reaches out to every Member of Congress to assist in publicizing the transition and responding to constituent concerns; (8) enable consumers to obtain the converter box coupon application form through the Commission's Web site and include that link in all Commission digital television transition materials; (9) post on the

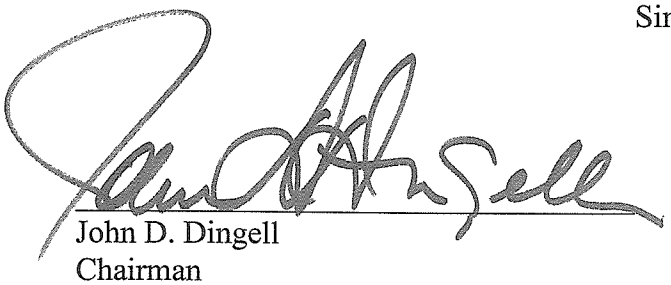
Commission's Web site a list of retail locations through which consumers can redeem converter box coupons; (10) require partners identified on the Commission's digital television Web site to report their specific consumer outreach efforts; and (11) periodically survey consumer awareness and satisfaction with the transition and the steps consumers must take to prepare for the cutoff.

Submission of Commission's Digital Transition and Consumer Education Plan

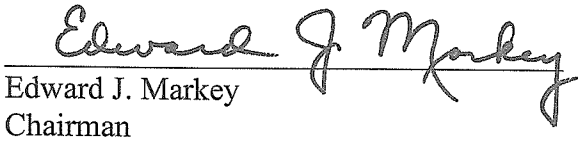
We are eager to see the Commission step up its overall efforts to ensure a successful transition. We, therefore, request Chairman Martin to provide us by Monday June 11, 2007, (1) the Commission's public outreach program for the digital television transition; (2) the date upon which it will begin implementation; and (3) a detailed description of the Commission's efforts to oversee the consumer education efforts of industry. We also request from Chairman Martin a comprehensive and detailed description of how the Commission will expend its requested $1.5 million line-item on consumer education efforts and we ask the Chairman to specify the Commission's plan to keep Congress regularly informed of the progress of the digital television transition, including the status of international coordination, broadcaster channel relocation, the Commission's public outreach program, and industry consumer education efforts.

Thank you for your attention to this matter. If you have any questions, please contact us, or have your staff contact Johanna Shelton, Colin Crowell, or Maureen Flood with the Committee staff at (202) 226-2424.

Sincerely,



John D. Dingell
Chairman



Edward J. Markey
Chairman
Subcommittee on Telecommunications
and the Internet

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Fred Upton, Ranking Member
Subcommittee on Telecommunications and the Internet