The Digital Television Transition and Public Safety Act of 2005

In late December 2005, the House and Senate agreed on legislation to speed the nation's transition to digital television while helping consumers to continue to use their analog televisions, recover spectrum for use by public safety officials and improve emergency communications, and auction off additional spectrum to reduce the national deficit. As of January 2006, the legislation, a piece of a major budget bill, awaits final approval from the House which plans to reconvene just before February. A summary of the legislation follows.

I. Spectrum Recovery

The bill directs the Federal Communication Commission (FCC) to take all steps necessary to require, by **February 18, 2009**, that full-power television stations stop analog broadcasting, and that Class A stations, whether broadcasting in analog or digital format, and full-power television stations broadcasting in digital format, conduct such broadcasting on channels 2 to 36 and 38 to 51. This enables spectrum now reserved for TV channels 52 to 62 and 65 to 67 to be auctioned, and channels 63, 64, 68, and 69 to be used for public-safety purposes. Among the necessary steps the FCC will need to take are to issue a report and order on the digital television table of channel allotments, and to coordinate those allotments with Canada and Mexico to resolve any international interference issues.

The bill also clarifies that only full-power stations, not low-power stations, must cease analog broadcasting by February 18, 2009.[1] Low-power stations, including Class A stations, may continue broadcasting in analog format after February 18, 2009, subject to future decisions by the FCC on how to complete the digital television transition for such stations. Low-power stations other than Class A stations may also continue such analog broadcasting above channel 51, subject to future FCC decisions, so long as those stations' use of those channels is secondary to the use of those channels by the auction winners and public safety officials.

II. Auction of Recovered Spectrum

The bill would amend the Communications Act of 1934 to require the FCC to conduct an auction of the recovered spectrum commencing by January 28, 2008. The FCC's auction authority would be extended through September 30, 2011. The proceeds from the auction of analog spectrum will be deposited in a single separate fund in the Treasury, to be

[1] Congress notes that the February 17, 2009, firm deadline will have little impact on most television households. Only consumers relying on over-the-air broadcasts should need to participate in the converter-box program. Only 14.86 percent of U.S. television households relied exclusively on over-the-air transmission as of June 2004, according to the FCC. By contrast, the FCC reports that 92.3 million households, representing 85.14 percent, subscribed to a multichannel video programming distribution (MVPD) service, such as those offered by a cable or satellite operator.

called the *Digital Television Transition and Public Safety Fund*, in order to fund several programs. On September 30, 2009, $7,363,000,000 shall be transferred from the Digital Television Transition and Public Safety Fund to the general fund of the Treasury.

III. Digital-to-Analog Converter Box Assistance Program

To help consumers who wish to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service, the bill authorizes the National Telecommunications and Information Administration (NTIA) to create a digital-to-analog converter box assistance program. Under the program, the NTIA is initially allocated up to $990 million of the spectrum auction revenues to send by U.S. mail up to two $40 coupons to each U.S. household that requests to participate in the program. Consumers may use the coupons toward the purchase of eligible digital-to-analog converter-boxes. Such boxes, and over-the-air digital televisions in general, can work with the antennas consumers already use in their homes for analog over-the-air broadcasts. The NTIA may use up to $100 million of the $990 million for administrative costs. Up to $5 million of the administrative funds may be used to educate consumers about the digital television transition and the digital-to-analog converter-box program. If, as the program progresses, it appears the NTIA will need additional funds, the NTIA may certify to Congress that it cannot operate the program without more money, at which point the funds available for the program shall increase to $1.5 billion and the cap on administrative expenses shall increase to $160 million. The NTIA would be allowed access to the additional funds 60 days after the certification.

Even if NTIA spends $100 million on administrative costs, the remaining $890 million in converter-box program proceeds would fund 22,250,000 coupons. And each additional $40 the NTIA does not spend on administration is another coupon it can make available to consumers. Thus, Congress expects in any NTIA certification to raise the caps that the NTIA explain in detail why access to additional funds is necessary, whether those funds are to be used for administrative costs or for the coupons themselves, and why the NTIA was unable to operate the program within the $990 million overall cap and $100 million administrative cap.

The coupon structure of the program and requiring consumers to make affirmative requests for coupons is based on Congress' belief that many consumers will neither need nor want a subsidized converter box. Moreover, Congress believes that if converter-boxes were made directly available at subsidized rates at stores, or coupons were automatically sent to every U.S. household, impulse participation by consumers who do not really need either a converter-box or a subsidy would cause the program to run out of funds before consumers who really do need a subsidized box avail themselves of the program.

Congress expects the NTIA to promulgate regulations within nine months of enactment governing: 1) the content and distribution of coupon request forms and coupons; 2) consumer redemption of, and retailer reimbursement for, the coupons; 3) the types of

converter boxes that shall be eligible for purchase with a coupon; 4) certification, education, and auditing of retailers involved in the program; and 5) consumer and retailer appeals.

Congress designed the requirement to send the coupons through the U.S. mail to help NTIA administer the two-coupon per household limit. That limit would be much more difficult to implement if the coupons themselves were distributed electronically or simply made available at government buildings such as post offices. The U.S. mail requirement is also intended to reduce fraud that might occur with electronically distributed coupons. Congress expects the NTIA to take additional measures to reduce fraud and abuse, such as including anti-counterfeit measures and perhaps unique serial numbers on the coupons. Congress also expects the NTIA to use the efficiencies of electronic media and networks, however, to make other aspects of the program more efficient, such as outreach efforts, the distribution of coupon request forms, and the reimbursement of retailers for coupons that consumers redeem. The NTIA is directed to take measures to protect consumer privacy in the use of information provided in conjunction with participation in the program.

IV. Public safety interoperable communications

The bill provides funding in the amount of $1 billion to help ensure interoperability for our nation's first responders.[2] In order to obtain a grant under this section, a public safety

[2] In order to ensure consistency amongst various federal interoperable communications grant programs, Congress expects the NTIA, in consultation with the Secretary of the Department of Homeland Security, to administer the grant program in a manner consistent with the recommended guidance for public safety communications and interoperability grants established by the Office of Grant and Training of the Preparedness Directorate and the SAFECOM Program of the Office for Interoperability and Compatibility of the Science and Technology Directorate of the Department of Homeland Security. In addition, Congress expects that the NTIA, in consultation with the Secretary of the Department of Homeland Security, will ensure that the grants awarded under this program are utilized by public safety agencies in a manner which is consistent with applicable state interoperable communications plans, state and urban area homeland security strategies, and the National Preparedness Goal and accompanying guidance. Moreover, in order to minimize the paperwork and administrative burden of public safety agencies applying for funds under this grant program, Congress expects the NTIA, in consultation with the Secretary of the Department of Homeland Security, to enable a public safety agency to utilize, to the maximum extent practicable, the identical application such public safety agency may have submitted to the Department of Homeland Security for any interoperable communications funding from the Department of Homeland Security and to take any other steps to minimize the administrative burden of public safety agencies that may be applying both for funds under this grant program and funds for interoperable communications from the Department of Homeland Security. Congress intends that grants under this section may be used for the acquisition costs associated with designing an interoperable communications system so that the system is properly engineered based upon the topography, population density, or other characteristics of the area in which the system will operate. There is a diverse array of technological and engineering solutions that enable interoperable communications systems. Congress encourages the NTIA, in consultation with the Secretary of the Department of Homeland Security, to consider distributing a limited portion of grant funds under this section in a manner that gives priority to those public safety agencies in areas designated as at high risk for natural disasters and threats of terrorism to the agriculture, food, banking, and chemical industries; the defense industrial base; emergency services; energy; government facilities; postal, shipping, public health,

agency shall -- l) submit an application to the NTIA, 2) agree that, if awarded a grant, the public safety agency will submit annual reports to the NTIA for the duration of the grant award period with respect to -- a) the expenditure of grant funds and b) progress toward acquiring and deploying interoperable communications systems funded by the grant -- and 3) agree to remit to the NTIA any grant funds that remain unexpended at the end of the 3-year period of the grant.[3] Grants shall be awarded in the form of a single grant for a period of not more that 3 years. Twenty percent of the costs for acquiring and deploying the communications systems must come from non-Federal sources.

V. NYC 9/11 digital transition

The bill provides $30 million to enable New York City area broadcasters to build interim facilities to ensure that the New York metropolitan area could receive an adequate digital broadcast signal until the new facilities atop the Freedom tower can be completed. Congress does not intend this program to alter or affect the FCC's authority with respect to licensing, interference, or other regulation.

VI. Low-Power television and translator stations

The bill sets $65 million for a program to convert low-power television stations and television translator stations from analog to digital transmissions. In addition, the legislation provides up to $10 million to facilitate continued service for the viewers of low power television stations over their analog TVs. The NTIA shall determine the maximum amount of compensation low-power television stations may receive to convert incoming digital TV signals into analog. The NTIA is to base compensation on the average cost of digital-to-analog conversion devices, but in no case shall such compensation exceed $1,000.

VII. National alert and tsunami warning program

The bill provides $156 million, over the course of fiscal year 2007 to 2012, for a modern all hazards alert and warning program to provide alerts in response to natural disasters, man-made accidents, and terrorist incidents.[4] The program will encourage, but not mandate, new technologies such as wireless communication devices, satellite radios, and personal computers to enhance the nation's current emergency warning capability. The goal of the program will be to help ensure that regardless of what communication technology an individual relies upon they will get an alert to a threat to public safety. The funding will be used to develop technologies to allow emergency managers to precisely geographically target their alerts to only populations at risk. Research and development will be encouraged, but not mandated, to be conducted through a cooperative research

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health care, information technology, telecommunications, and transportation systems; water; dams; commercial facilities; and national monuments and icons.

[3] Any grant funds that remain unexpended may be awarded to other eligible grant recipients. At the end of fiscal year 2010, any such re-awarded grant funds that remain unexpended shall be remitted by the grantee to the NTIA and may not be re-awarded to other grantees.

[4] $50 million is earmarked for a tsunami warning and coastal vulnerability program.

program with the telecommunications industry. The funds should also be used to provide emergency managers with the tools necessary to input alerts into a national alerting system and have them retransmitted across all appropriate communication mediums. There should be established a procedure to provide credentials to emergency managers who wish to use the system to ensure the integrity of emergency alert communications to the public. The office responsible for managing the system should also ensure that personnel using the system are appropriately trained on how and when to use the system and understand that the system should only be used for grave threats to public safety. Personnel should also be trained to issue alerts that provide the public with information on what to do to protect themselves from the threat.

VIII. ENHANCE 911

The bill makes $43.5 million in grants available to implement the ENHANCE 911 Act of 2004. That bill direct the NTIA and the Administrator of the Department of Transportation to: 1) establish a joint program to facilitate coordination between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, and telecommunications carriers, equipment manufacturers, and vendors involved in the implementation of E-911 (enhanced 911 emergency phone) services[5] and 2) create an E-911 Implementation Coordination Office to facilitate such coordination and implementation. Requires the NTIA and USDOT to: a) develop a management plan for the joint program and b) provide grants to eligible entities for the implementation and operation of enhanced E-911 services.

IX. Essential air service program

The bill provides $30 million in grants to the Essential Air Service program. The aim of the program is to guarantee that small communities that were served by certificated air carriers before deregulation continue to have a minimal level of scheduled air service.

X. Supplemental license fees

The bill also allows the FCC to assess additional fees in the aggregate amount of $10,000,000 during fiscal year 2006. The fees will be deposited in the Treasury as offsetting receipts.

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[5] E-911 is a location technology advanced by the FCC that will enable mobile, or cellular, phones to process 911 emergency calls and enable emergency services to locate the geographic position of the caller.