

Legislative Bulletin.....January 27, 2009

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S. 328 - DTV Delay Act

Key Conservative Concerns

Take-Away Points

- A delay from the February 17th DTV deadline would undermine the public outreach that has resulted in widespread recognition of the termination of analog transition next month.
- Delaying the auction winners from immediate access to the 700 MHz spectrum would result in litigation, hinder broadband deployment, and prohibit the advancement of public safety communications capabilities.
- A delay will not move a single consumer off of the wait list for converter-box coupons and is being used to justify \$650 million of handouts in the so-called stimulus bill.
- A one-time delay sets a risky precedent making future delays more likely and causing more confusion, litigation, and headaches for the American public.

For more details on these concerns, see below.

S. 328 - DTV Delay Act (Sen. Rockefeller /D-WV)

Order of Business: The bill is scheduled to be considered on Tuesday, January 27th, under a motion to suspend the rules and pass the bill.

S. 328 was introduced in the Senate on Monday, January 26th, and immediately passed the Senate under Unanimous Consent. A mark-up scheduled today for similar legislation in the House Energy & Commerce Committee was cancelled yesterday afternoon. The Democrat Leadership announced that S. 328 would be on the House Floor as a suspension very late last evening.

Summary: S. 328 delays the Digital Television transition date to June 12, 2009 (from February 17th) and extends the deadline for consumer coupon requests to July 31, 2009 (from March 31). Additionally the legislation:

- Denies auction winners ownership of the 700MHz spectrum for 116 days;
- Allows every consumer to request replacement coupons for every coupon that expires until the consumer has redeemed two coupons;
- Places first responder use at risk. Language in the bill designed to allow all stations to go all-digital before the new deadline with FCC approval and allows public safety officials to use spectrum before the delayed transition date. However, Energy & Commerce Committee Republicans point out that FCC regulations are extremely burdensome and make it unlikely that a number of broadcasters will be able to end their analog broadcasts early. Additionally, public safety officials may only use spectrum if broadcasters on that station have transitioned voluntarily and will not cause interference, so it remains unlikely many first responders will have access to this spectrum before June 12;
- Extends FCC's spectrum auction authority from 2011 to 2012 to help cover the cost of extending the coupon program. Committee Republicans do not believe this will cover the cost of reprinting the coupons, and point out that additional budget authority will be required;
- Requires the National Telecommunications and Information Administration (NTIA) to send Congress reports on coupon request and redemptions.

Additional Background: In 2005, the Deficit Reduction Act mandated for all analog television signals to be converted to digital by February 17th, 2009. The reasoning for this switch was to dedicate a section of spectrum for first responder use to improve on communication failures experienced during the 9-11 tragedy. Additionally, the open spectrum would allow wireless service providers the ability to purchase this spectrum from the government to enhance broadband and wireless service and deploy advanced portable electronic devices.

Pursuant to this date, any television that receives over-the-air analog signals would “go dark” and no longer receive a picture. The only solution is for a consumer to purchase cable or satellite services, buy a digital television set, or purchase a DTV converter box. To help subsidize the costs of the converter, a coupon program was established through the National Telecommunications and Information Administration (NTIA).

Unfortunately, due to a number of factors, the coupon program was riddled with delays and many consumers let their 90 day coupons expire. This led to a backlog of households able to obtain coupons and converter boxes at a subsidized rate. Despite this, out of the 14.3 million households Neilson identified as receiving an over-the-air signal, it is estimated that coupons have been distributed to 13.5 million as of January 13th of this year. While concern remains to assist those who have not obtained coupons, many conservatives believe a delay is not the best course of action. Ranking Member Joe Barton (R-TX) introduced compromise legislation (H.R. 661) which retains the current

deadline while providing emergency funding for the program offering consumers coupons to buy DTV converter boxes. Chairman Waxman has not granted a hearing on the measure.

RSC Bonus Fact: \$1.5 billion has already been allocated for two forty-dollar converter box coupons per home. Only half of that in the coupon program has been spent on redeemed coupons; the other half remains in circulation, which is why there's a wait list. Additionally, industry and government have spent \$1 billion on education and awareness programs for the digital switch.

Committee Action: None.

Possible Conservative Concerns: Some conservatives believe that a delay could cause additional confusion, increase costs for broadcasters, spawn litigation, and compromise public safety. Legislation that set the transition hard date of February 17th was enacted over 3 years ago. Congress always knew that some problems would occur and its primary objective was to limit them. No date will bring 100% success. Some conservatives argue that the costs of delaying this transition far outweigh the benefits for the relatively small number of households that are reportedly unprepared for the conversion.

Administration Position: No official SAP has been released, but the Obama Administration asked the House and Senate for a delay and proposed \$650 million for additional coupons in the "stimulus" to be considered today and tomorrow.

Cost to Taxpayers: No CBO cost estimate was provided at press time for S. 328, Republican Committee staff estimated this bill could cost \$100 million, beyond the extra money "needed" in the so-called "stimulus" bill.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, on wireless communications service providers by having to delay acquisition of the 700 MHz spectrum.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: None is cited in the legislation, and a committee report citing constitutional authority is not available.

RSC Staff Contact: Bruce F. Miller, bruce.miller@mail.house.gov (202)-226-9720