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Legislative Bulletin.....February 4, 2009

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S. 352 – 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 transmission later this 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.
- S. 352 does not move a single consumer off of the wait list for converter-box coupons
- A one-time delay sets a risky precedent making future delays more likely and causing more confusion, litigation, and headaches for the American public.
- \$1.5 billion has already been allocated for two \$40 converter box coupons per home. Only half of that \$1.5 billion has been spent on redeemed coupons; the other half remains in circulation, which is why there’s a wait list.
- Industry and government have spent \$1 billion on education and awareness programs for the digital switch.
- According to Communications Daily, “the 1,758 full-power U.S. TV stations may face up to \$141 million in additional electric bills” because of the delay.

For more details on these concerns, see below.

S. 352—DTV Delay Act (Sen. Rockefeller, D-WV)

Order of Business: The bill is scheduled to be considered on Wednesday, February 4, 2009 under an expected closed rule.

Major Changes Since the Last Time This Legislation Was Before the House: There are very few changes to this legislation since it was last considered in the House as S. 328 on January 27, 2009 and defeated by a vote of 258 – 168 under suspension of the rules.

Summary: S. 352 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. A technical correction was added to S. 352 to delay the distribution of these coupons until budget authority could be provided to comply with “pay-go” rules. This budget authority exists under a \$650 million program contained in the American Recovery and Reinvestment Act of 2009 (H.R.1). Until this money is appropriated, the coupon program will still continue to suffer a backlog;
- 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. S. 352 did include additional language in an attempt further clarify this issue. However, in order for public safety spectrum to be free of interference, TV broadcasters must be completely off the air and transmitters must be sufficiently far away enough from those TV stations still on adjacent channels. Public safety agencies can’t make use of the spectrum just because one station shuts down, so it remains unlikely many first responders will have access to this spectrum before June 12. In addition, Energy & Commerce Committee Republicans continue to 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;
- 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 that all analog television signals be converted to digital by February 17, 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 there are concerns on how 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: The \$650 million provided for the DTV converter box coupon program in H.R. 1, would pay for 5 million 20 inch Dynex digital television sets.

Committee Action: This legislation was introduced in the Senate on January 29, 2009 and immediately passed by Unanimous Consent. The legislation has not been referred to a House Committee.

Possible Conservative Concerns: Some conservatives continue to 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. None of the proposed changes in S. 352 are substantive enough to have any effect to make a DTV delay any more effective than in the previous bill.

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 that was included in the so-called “stimulus” which passed the House last week.

Cost to Taxpayers: While no CBO cost estimate was provided for S. 352, budget authority is provided to utilize \$650 million in supplemental funding for Digital-to-Analog Converter Box Coupons and related activities surrounding the ongoing transition to digital television provided in the passage of H.R. 1. It is important to note approximately \$1.5 billion has already been spent on this program.

Does the Bill Expand the Size and Scope of the Federal Government?: No, although it does significantly expand the scope of NTIA coupon program for 120 more days.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, S. 352 includes private-sector mandates 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?: An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time.

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

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