

FCC Imposes DTV Consumer Education Initiative Requirements

Legal Alert
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Garvey Schubert Barer Legal Update, March 11, 2008.

Broadcasters, cable systems and other entities must educate viewers about the DTV transition under new rules released by the FCC this month. The new rules require broadcasters to provide on-air information to viewers but allow broadcasters three alternative ways to comply. Additionally, the Commission has created a new Form 388, DTV Consumer Education Quarterly Activity Report, to be filed electronically and kept in broadcasters' public files. So long as the Commission receives OMB's approval on the new forms, which is currently pending, the first report will be due April 10, 2008.

The Commission has also set forth rules requiring other Commission regulated entities to include consumer inserts detailing the DTV transition process or to inform the Commission about the educational outreach initiatives the entity undertakes.

The new rules give broadcasters the ability to select one of three options to meet their education requirements. Each option requires a varying schedule for airing public service announcements (PSAs) and crawls that contain specific DTV transition information.

Option 1

Option 1 requires broadcasters to air one transition PSA and run one transition crawl in every quarter of every day. This requirement increases to two of each as of April 1, 2008 and to three as of October 1, 2008 as the transition nears. The Commission has broken down the day into quarters from 6:01 a.m. to 12:00 p.m., from 12:01 p.m. to 6:00 p.m. from 6:01 p.m. to 12:00 a.m. and from 12:01 a.m. to 6:00 a.m.

Crawls must indicate that: (1) as of February 17, 2009, full power analog broadcasting will end and analog-only televisions may lose reception if action is not taken; and (2) more information can be obtained by phone or online and how to obtain that information. Crawls must be provided in the same language as the majority of the programming carried by the station.

PSAs must be at least 15 seconds and must contain at least the same information as provided in the crawls. All transition PSAs must be closed captioned and are expressly not subject to any captioning rule exemption. Additionally, over the span of the outreach campaign, broadcasters must also inform viewers what they must do to continue viewing the signal, whether viewed over the air or via a multichannel video programming distributor (e.g. direct broadcast satellite, cable or FiOS) and must give specific information about that station's

transition. The information may involve changes in service areas, channel numbering changes, additional multicast or HD channels, timing or other information specific to that station.

Option 2

Option 2 is based on a proposal set forth by the NAB. Under Option 2, broadcasters must air an average of sixteen transition PSAs and sixteen transition crawls, snipes and/or tickers per week during each quarter of the transition period between 5:00 a.m. and 1:00 a.m. Any PSAs or crawls aired outside this window will not be covered towards this requirement. Further, during each quarter, $\frac{1}{4}$ of all PSAs and $\frac{1}{4}$ of all crawls, snipes and/or tickers must air between 6:00 p.m. and 11:35 p.m. Eastern and Pacific and between 5:00 p.m. and 10:35 p.m. Central and Mountain. The requirement will apply to both analog and digital streams separately.

All transition PSAs must be captioned, are not subject to any captioning exemption and the Commission expects that these PSAs will be aired in addition to and not in place of PSAs on other relevant community issues. Under Option 2, required PSAs must be 30 seconds in length, although stations are free to air two 15 second PSAs in place of one 30 second PSA. Additionally, broadcasters must air one 30 minute informational program on the DTV transition between 8:00 a.m. and 11:35 p.m. prior to February 17, 2009.

Under Option 2, broadcasters must also begin a 100 day countdown to the transition commencing November 10, 2008. During the 100 day countdown, stations must air either a graphic display, animated graphic, graphic with audio or a longer form reminder addressing the number of days remaining in the countdown and the phone number or website to visit for additional information.

Option 3

Option 3 is available only to non-commercial broadcasters and is based on a proposal submitted by Association of Public Television Stations. Accordingly, this option requires broadcasters to air 60 seconds of on-air consumer education on various timeslots, including a minimum of 7.5 minutes per month between 6:00 p.m. and 12:00 a.m. This requirement increases to 120 seconds per day and 15 minutes per month as of May 1, 2008 and increases again to 180 seconds per day and 22.5 minutes per month as of November 1, 2008, all between 6:00 p.m. and midnight. Again, all PSAs must be captioned and are not subject to *any* captioning exemption. These stations will also be required to air one 30 minute informational program on the DTV transition between 8:00 a.m. and 11:35 p.m. prior to February 17, 2009. These requirements apply to both a station's analog and digital streams separately. However, these broadcasts may be aired simultaneously.

Reporting Requirements

For all broadcasters, no matter what option is selected, a DTV Consumer Education Quarterly Activity Report, Form 388, must be completed, filed electronically and placed the station's public inspection file no later than the 10th day of the next calendar quarter. A copy must also be placed on the station's website, if one is maintained.

LPTV, Class A and Translator Stations

There are no requirements placed on the LPTV/ClassA/translator licensees, although the Commission does make some suggestions. Specifically, these licensees should alert their viewers that they will continue broadcasting analog after the transition date. Further, if viewers are receiving the signal OTA, and are planning to purchase a digital converter box to view local digital signals, they should purchase a converter that has the capability to pass through analog signals. Some of the converters do not have this capability and accordingly, absent two receivers or a switch, viewers will lose the ability to view the analog signal once they begin using the digital converter.

Other Entity Requirements

The Commission is additionally placing DTV transition education requirements on other regulated entities. First, all MVPDs will be required to provide a monthly "bill stuffer" giving general information about the DTV transition as well as how to get further information. Second, parties manufacturing, importing or shipping interstate TV receivers or devices designed to work with TV receivers will be required to include notices with all devices shipped. Third, in order for DTV.gov partners to retain partnership status, they must file a quarterly report outlining consumer education efforts. Fourth, any retailer participating in the converter box coupon program must detail to the Commission their employee training and consumer information plans and will be subject to spot inspections. Fifth, any eligible telecommunications carrier receiving federal universal service funds will also be required to include a "bill stuffer" in monthly bills to Lifeline/Link-Up customers.

General Procedural Issues

The rules for broadcasters will go into effect as of publication of the Report and Order in the Federal Register. The rules governing inserts and bill-stuffers will become effective 30 days after publication. For most entities, these requirements will terminate as of March 31, 2009.