
For Thirty Days After February 17, 2009, Television Stations May Continue Analog Transmissions for Emergency and Informational Purposes

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On December 23, 2008, the President signed into law the Short-Term Analog Flash and Emergency Readiness (SAFER) Act. This legislation, previously passed by the House of Representatives on Dec. 10, 2008 and by the Senate on Nov. 20, 2008, directs the Federal Communications Commission (“FCC”) to develop a program to permit analog broadcasts of public safety and digital television (“DTV”) transition information for 30 days after the February 17, 2009 DTV transition deadline. Accordingly, stations must await action by the FCC before this post-February 17, 2009 authority will be effective.

Introduced in the Senate by Sen. Jay Rockefeller (D-WV) and in the House by Rep. Lois Capps, the SAFER Act aims to alleviate fears that the transition to DTV will result in widespread confusion among viewers still using analog-only television sets. Sen. Rockefeller noted that losing TV service “is not just a matter of convenience, but it is a matter of public safety.” Many concerns stem from recent “test” transitions. For example, in a recent Wilmington, N.C. DTV transition test in which analog operations transitioned to digital operations temporarily, thousands of consumers contacted the FCC about losing their TV service despite significant public and private educational outreach initiatives in advance of the test.

The legislation requires the FCC to establish a program, no later than January 15, 2009, that *encourages and permits* TV stations, where technically feasible, to continue broadcasting analog signals that contain only public safety information as well as DTV transition information for a 30-day period beginning on February 18, 2009. Broadcasters will not be required to maintain analog broadcasts; however, those stations choosing to remain on the air with an analog signal will be required to air both emergency and DTV educational information. Participating stations will be required to broadcast emergency information on their analog channels, including critical details regarding the emergency. Additionally, information must be broadcast, in both English and Spanish, concerning the DTV transition, including the fact that the transition has taken place and that viewers must take action to continue receiving TV service. The analog broadcasts must also contain

information about the steps that viewers will need to take to receive details about emergencies via DTV service and to convert to DTV service, including a phone number and an Internet address by which help with the transition may be obtained in both Spanish and English. The Commission also retains discretion under the bill to permit stations to broadcast other information related to consumer education about the DTV transition or regarding public safety using analog signals. Sen. Rockefeller's staff has indicated to our attorneys that the bill does not specifically authorize stations to seek commercial sponsorship to offset the costs of maintaining an analog signal during the 30-day program. However, his staff acknowledges that, because the legislation also does not specifically exclude sponsorship, the FCC will have discretion during its rulemaking to decide whether sponsorship will be permitted. It is contemplated that the NAB will push for favorable resolution of this issue.

In implementing the program, the FCC is required by the legislation to take into consideration the following factors and limitations. First, the Commission must take into account market considerations, such as channel and transmitter availability. Second, the FCC must ensure that analog broadcasts permitted under the program do not cause harmful interference to DTV signals. In particular, the legislation prohibits the broadcast of analog signals on any spectrum which is in the process of being allocated by the Commission for use by public safety radio services. Next, the bill requires the FCC to take into consideration broadcasters' digital power levels and transition and coordination plans. Finally, the bill states that the Commission cannot require cable systems to retransmit or otherwise carry analog signals that are broadcast pursuant to the 30-day program created under the new law.

We will issue a further Advisory on the subject when the FCC has taken the action contemplated by the new law.

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