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March 27, 2009

The Honorable John D. Rockefeller IV  
Chairman  
The Honorable Kay Bailey Hutchison  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Henry A. Waxman  
Chairman  
The Honorable Joe L. Barton  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Department of Commerce, National Telecommunications and Information Administration: Amendments to the Digital-to-Analog Converter Box Program to Implement the DTV Delay Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Commerce, National Telecommunications and Information Administration (NTIA), entitled “Amendments to the Digital-to-Analog Converter Box Program to Implement the DTV Delay Act” (RIN: 0660-AA19). We received the rule on March 12, 2009. It was published in the *Federal Register* as a final rule on March 12, 2009. 74 Fed. Reg. 10,686.

The final rule amends the regulations for the Digital-to-Analog Converter Box Program (Coupon Program) to conform to the DTV Delay Act, Pub. L. 111-4, 123 Stat. 112 (Feb. 11, 2009), which extended the deadline for the digital conversion and the coupon application period for the Digital-to-Analog Converter Box Program by four months. The final rule extends the last day that a household can request coupons for digital-to-analog converter boxes from March 31, 2009, to July 31, 2009. The final rule also adds a new section to provide that a household may request one replacement coupon for each coupon that was issued to such household and that expired without being redeemed. The final rule has amended the regulations to provide NTIA additional flexibility in how it distributes coupons to households, so that NTIA is no longer required to distribute coupons via the United States Postal Service. Finally, NTIA added a new section to the regulations permitting the agency

to prioritize the distribution of coupons to over-the-air only households in the event that a waiting list becomes necessary.

Enclosed is our assessment of the NTIA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that NTIA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Anita M. Gomez  
Acting Assistant Secretary for  
Communications and Information  
Department of Commerce

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF COMMERCE,  
NATIONAL TELECOMMUNICATIONS AND  
INFORMATION ADMINISTRATION  
ENTITLED  
"AMENDMENTS TO THE DIGITAL-TO-ANALOG  
CONVERTER BOX PROGRAM TO IMPLEMENT  
THE DTV DELAY ACT"  
(RIN: 0660-AA19)

(i) Cost-benefit analysis

NTIA prepared a cost-benefit analysis in conjunction with this final rule. As a baseline, NTIA considered the effects if there were no extension of the DTV Converter Box Coupon Request Deadline. NTIA noted that its waiting list contained over 4.2 million coupon requests, and that those combined households, without the extension, would incur a total cost exceeding \$210 million if they had to purchase converter boxes without the coupon subsidy. NTIA also cited a Nielson Company study indicating that, as of February 18, 2009, more than 5 million households were fully unprepared for the transition to fully digital broadcasting, with the highest lack of preparation among viewers under 35 years old, African American and Hispanic households. The total costs to these households of purchasing a converter box without subsidy would be \$250 million.

NTIA notes that enactment of the DTV Delay Act and the ARRA reflect a commitment to assisting eligible households in retaining access to broadcast television programming following the digital television conversion. Consistent with its responsibility to administer the Coupon Program to achieve this goal, NTIA's final rule seeks to expedite coupon distribution as effectively and efficiently as possible. Therefore, NTIA concluded the benefits of the final rule exceed its costs and NTIA supported adoption of the final rule to facilitate the digital transition for America's families.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Regulatory Flexibility Act does not apply to this final rule, because NTIA found good cause to waive prior notice and opportunity to comment under the Administrative Procedure Act.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act does not apply to this final rule, because NTIA did not publish a general notice of proposed rulemaking before promulgating this final rule. 2 U.S.C. § 1532(a).

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

NTIA found that it is impracticable and contrary to the public interest to provide notice and a public procedure on this final rule, as permitted by the good cause exception at 5 U.S.C. § 553(b). NTIA also found good cause to waive the 30-day delay in effectiveness required by 5 U.S.C. § 553(d), because such a delay is impracticable and contrary to the public interest. NTIA based its determinations on the fact that the limited duration of the statutory extension of the application period, from March 31, 2009, to July 31, 2009, requires swift action in order to amend the rules and implement program changes prior to the extended period's expiration.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains no new collection-of-information requirements subject to the Paperwork Reduction Act. The final rule contains the same requirements that were previously approved by OMB Control Numbers 0660-0024, 0660-0026, and 0660-0027.

Statutory authorization for the rule

The final rule is authorized by the DTV Delay Act, Pub. L. 111-4, 123 Stat. 112 (Feb. 11, 2009).

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule has been determined to be economically significant and was therefore reviewed by the Office of Management and Budget. NTIA prepared an Economic Analysis of the costs and benefits of implementing this rule change.

Executive Order No. 13,132 (Federalism)

NTIA determined that this final rule does not contain policies having federalism implications, and therefore does not require the preparation of a Federalism Summary Impact.