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## **At Last Minute, Congress Muddies DTV Transition Timetable**

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With just weeks to go before the years-in-the-making DTV Transition was scheduled to occur at long last, the politicians blinked. Well, at least some politicians. Senators, mainly. House members, too, but not so much. As of press time, it appears that the February 17 deadline – a deadline which many thought had been permanently etched in stone – may not be permanent after all. But then again, maybe it is. Confused? Join the club.

The actual need for any extension of the deadline is a matter of some dispute. In a years-long process which occasionally resembled the herding of cats, the FCC's staff had patiently and very effectively managed to get virtually the entire full-service TV industry lined up and ready to hit their marks on, or even before, February 17. That alone was a herculean feat for which the staff, and the industry, should be applauded.

But the higher-ups still fretted that the public at large might not be ready for the transition. Data available from the Wilmington, NC, DTV experiment last Summer suggested that a small but significant percentage of purely over-the-air viewers might encounter problems. The FCC re-doubled its educational efforts, dispatching staffmembers nation-wide to educate and enlighten the Great Unwired. Through the Fall there appeared to be cautious optimism that everything would go smoothly and according to schedule.

Any such optimism, however, was not deeply rooted. With the first sign of some limited, potential problems, optimism was blown away by darker negative forces. That first sign was the January 5 announcement by NTIA that it was freezing the DTV converter coupon program because it had maxed out on the \$1.34 billion that Congress originally allotted to that program. Of course, the fact that NTIA had run out of cash indicated that the public at large had taken all those DTV PSAs to heart and had signed up for their government-issue DTV coupons in droves – which should have encouraged any glass-half-full types willing to think about it. But the glass-half-empty folks saw it differently: with a coupon freeze on, there might be as many as six million households that might not be able to get their coupons before February 17! The horror!

Bear in mind that the mere lack of coupons did *not* mean that consumers couldn't go out and buy DTV converters. It simply meant that – having declined the opportunity to sign up for coupons for the 10 months or so that the coupons had already been available – they would have to pay full price for their converter boxes. Such missed opportunities are often the cost of procrastination.

But rather than impose a procrastination tax by sticking to the February 17 deadline, the politicians started the drumbeat for extending that deadline. On January 7 (two days after the coupon freeze) Consumers Union urged Congress to extend – a suggestion which was seconded in the press by influential House personnel. On January 8, the Obama Transition Team called for an extension. By January 12, press reports indicated that extension bills were being drafted in both the Senate and the House. On January 14, Commissioner McDowell wrote to Chairman Martin, describing serious reservations he had about the Commission's readiness for the transition. On January 16, Commissioners Copps and Adelstein wrote to Congress with similar concerns. A number of Republican members of the House sent a letter to the President-Elect on January 14, urging that the February 17 date be maintained, but by then the momentum toward extension seemed irresistible.

On January 26 the Senate passed a bill extending the deadline to June 12. At that point the conventional wisdom was that an extension was a done deal. But wait! The House took up a corresponding bill on January 28 and it failed to pass. (Actually, the extension was supported by a significant majority of the House, but as it turns out the bill needed a two-thirds majority because of certain parliamentary arcana. Who knew?) Reports indicate that the House may try again in the next week or so — which is good, of course, because February 17 is only about three weeks away. If it does pass this time, White House sign-off is thought to be a virtual certainty.

The good news is that the Senate bill would *not* require stations to continue analog operation until June 12. Rather, it would merely permit stations to continue to operate analog until then. (The original February 17 deadline mandated that all analog operation stop as of that date – except, of course, for stations operating pursuant to the “analog nightlight” service which a skittish Congress authorized in December.) So all the stations which had diligently arranged themselves to shift to digital-only on February 17 will presumably still be able to do so, if they want.

Stay tuned for further developments on the deadline front (or better yet, check our blog – [www.commlawblog.com](http://www.commlawblog.com) – every day or two for updates).

An extension of the deadline will likely entail some tweaks to the Analog Nightlight

program. That program (described in last month's *Memo to Clients*) permits some continued analog operation past the February 17 deadline. Acting under extraordinarily short Congressionally-imposed time constraints – the “Analog Nightlight” Act became law on December 23, requiring the Commission to draft, accept and consider public comments, and adopt new procedures by January 15 – the FCC staff was able to get the nightlight service into the books on schedule. But now it's back to the drawing board for the staff, which will have to accommodate the extended deadline.

Meanwhile, the FCC has also fired up the Replacement Digital Translator program also described in last month's *Memo to Clients*. That program is still in the rulemaking stage, although the Commission is accepting, and granting, STAs for interim operation pending final adoption of rules.

The bottom line is that the Transition may be with us a little while longer. And while that may be something of a disappointment to those of us who have had enough of the Transition already, it may not really be a bad thing. Extension of the deadline (at least as envisioned in the Senate bill which has passed) may lead to a more gradual transition overall: instead of a near-universal analog shut-down on February 17, we are more likely to see stations, or even whole markets, shutting down analog operations at different points between now and June. That in turn may reduce the likely trauma both to the public and to those who would have to deal with the public's trauma. But then again, maybe not. Stay tuned.