

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
CONCURRING IN PART**

RE: DTV Consumer Education Initiative, Report and Order, MB Docket No. 07-148

The Commission's top priority this year is the success of the DTV transition. We have worked hard on rules to guide broadcasters through the technical work of the transition; and I applaud their investment in digital facilities and commitment to serving their communities. The next step is to ensure that every over-the-air viewer in every community in America receives the message about the tremendous advances in picture quality and sound that DTV will bring. Moreover, members of the public need to know the practical steps they must take to make the transition in their own homes work smoothly.

I am delighted that the private sector, working with its government partners, has developed a strong plan to educate the American people about the DTV transition. I enthusiastically support inclusion of this plan as part of our order. The order permits broadcast stations to choose among three options regarding consumer education obligations – one suggested by the broadcast industry, one originated at the Commission and the third by public television stations.

Broadcasters – who have the greatest incentive to ensure that they keep their viewers post-transition – have developed a comprehensive and multi-faceted plan to educate consumers about the transition. As proposed by the industry, broadcasters who commit to this plan will engage consumers through a combination of multilingual public service announcements (“PSAs”) throughout the day (including prime-time), 30-minute programs, stories on the local news, online resources, community events and speakers and outdoor advertising. The plan was developed by drawing on the extensive marketing experience of the broadcasting industry about how to most effectively reach and educate viewers. Each broadcaster has the flexibility to tailor the plan according to what its expertise suggests will work best in its community. Eighty-four percent of all stations – both commercial and noncommercial – have already committed to the industry plan and these efforts have commenced. I am pleased that the Commission has adopted this plan as part of today's order. Forging a public-private partnership with the industries most affected by the DTV transition will result in an effective consumer education campaign that serves the public interest.

For stations that do not commit to the industry plan, today's order mandates that each broadcast day be divided into four quarters and requires that stations air a certain number of PSAs and crawls during each of those day parts during certain periods before and after the February 17, 2009, transition date. The order also requires that the PSAs and crawls contain specific information and be of a certain length. These requirements will ensure that stations that are not taking a multi-faceted approach at least use PSAs and crawls to inform viewers about the transition.

I am pleased that our order presents a feasible option for public television stations that recognizes the differences between commercial and noncommercial stations. Public television has developed a multi-faceted and targeted consumer education campaign of its own, dedicating airtime, grass-roots efforts and other resources worth over \$50 million. The order allows public television stations needed flexibility to comply with consumer education plans in ways that are relevant to their stations.

I applaud the consumer education efforts of several other industries as well. The Digital Television Transition Coalition -- formed in February 2007 by business, trade and industry groups in broadcasting, cable, satellite, consumer electronics, and retailers as well as grass-roots and membership organizations -- has commenced marketing and public education strategies to distribute consistent, accurate information about the transition to the public.

Separately, the cable industry launched an extensive campaign, which includes \$200 million in TV advertising, to educate viewers about the DTV transition. The campaign also includes community outreach through websites, brochures, local programming and other communications. We as viewers have begun to see the results of these efforts, with more to come. I hope that the requirements in the order that apply to MVPDs, consumer electronics companies and retailers give them sufficient flexibility with respect to delivering the appropriate message to their customers, while taking into consideration the government's interests in ensuring that viewers receive accurate and relevant information.

When the government mandates speech, as the Commission does today, we must adhere to the principles of the First Amendment and ensure that the requirements are narrowly tailored to advance our interests. Clearly, ensuring a smooth transition from analog to digital broadcasting is a substantial governmental interest. Our order today, however, gives stations a choice between a flexible and creative private sector solution or more regulation.

On the other hand, I note my concerns about the First Amendment implications of two parts of our order: first, requiring telephone companies that receive Universal Service funds to provide DTV transition information in the monthly bills of Lifeline/Link-up customers; and second, requiring winning bidders in the currently open 700 MHz spectrum auction to detail what, if any, consumer education efforts they are conducting. In both cases, the nexus between our governmental purpose and the means to achieve that purpose are quite remote. In the case of telephone companies, it is unclear whether there is a correlation between Lifeline and Link-up customers and over-the-air viewers. Our order makes no such correlation. Yet, the order requires phone companies to provide a message, on government's behalf, that is unrelated to the services they provide. With respect to the winners of the 700 MHz auction, they will not provide service until after the digital transition ends, and when they do, the service may not be related to television. Given the infirmities in rationale for both of these requirements, I would have preferred not to adopt these mandates. Therefore, I must concur in these parts of the order.