

**RESPONSES TO QUESTIONS OF
CHAIRMEN JOHN D. DINGELL AND EDWARD J. MARKEY**

- 1. The Request for Proposals (RFP) for the TV Converter Box Coupon Program provides that “33.5 million coupons could be distributed to consumers through the Program at the full funding level.” (footnote deleted) Why did the RFP state that the program was to distribute only 33.5 million coupons when NTIA was aware that expiring coupons might mean additional coupons would be available for distribution? Please explain in detail why the RFP failed to account for the redistribution of unredeemed and expired coupons.**

A: The RFP advised potential offerors that NTIA intended to award a fixed price Requirements Contract. As such, and in accordance with Federal Acquisition Regulation (FAR) SubPart 16.503, the RFP provided an estimated total quantity of the coupons necessary (33.5M coupons). This estimate provided the basis for industry proposals and the resulting contract. It did not limit the Government’s ability to obtain additional coupons with funding resulting from coupons that were not redeemed and had expired. Section I.71 of the contract includes the standard clause from the FAR applicable to requirements contracts.¹ While NTIA anticipated that the program’s redemption rate would be less than one hundred percent, and that therefore it was likely that more than 33.5 million coupons would be issued, NTIA did not have program data to determine the specific amount of additional coupons that may be needed, and so could not contract for a specific additional amount at that time. Instead, NTIA set aside administrative funding to contract for additional coupons once program redemption data could be observed.

NTIA decided to award a Requirements Contract for this Program to afford maximum flexibility in the quantity of coupons that could be ordered, while containing costs. The RFP stated that the contract would include – and indeed the contract does include – several FAR clauses that allow NTIA to order goods and services in excess of the originally estimated total quantity. The Department of Commerce Acquisition Review Board agreed that the pricing approach of the RFP incorporated appropriate language to provide sufficient flexibility in regards to the contract maximum quantities as coupon requests, redemption rates and payments to retailers would likely change during the term of the contract. This approach gives NTIA the flexibility to issue coupons above the estimated quantities listed in the RFP.

In addition, through the Q & A process made publicly available to all offerors following release of the RFP, NTIA made it clear that “Assuming that some coupons will expire unused and therefore that the resulting funds are available for distribution to other consumers, it is theoretically possible for the offeror to be reimbursed for distribution of more than 22,250,000 coupons within the initial set of funds.”²

¹ FAR 52.216-21 REQUIREMENTS (OCT 1995).

² See Question Number 198.

2. Why did the contract with IBM for the TV Converter Box Coupon Program similarly state that the contract for the program was for the distribution of 33.5 million coupons? Why did the contract fail to account for redistribution of unredeemed and expired coupons?

A: Both the RFP and the subsequent contract awarded to IBM contemplate the distribution of more than 33.5 million coupons by virtue of their structure vis-à-vis a Requirements Contract and the specific provisions cited above. Section I.71 of the contract includes the standard clause from the FAR applicable to requirements contracts. Accordingly, FAR SubPart 16.503 requires the Contracting Officer to provide potential offerors a realistic estimated total quantity in the RFP and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. In effect, the requirements contract structure enables administrative flexibility to respond to program demand, including through follow-on orders for additional coupons if demanded. In addition, in IBM's Performance Work Statement (PWS), which is incorporated into the contract, the company stated that "[a]s Initial Funds are de-obligated, new coupons will be issued and Initial Funds re-obligated, for any queued, mixed signal households."³

On July 18, 2008, pursuant to its rights under the requirements provisions of the contract to purchase additional goods or services as stated in the contract, NTIA initiated action with IBM to order an additional quantity of 6 million coupons, *i.e.*, coupons distributed using funds from unredeemed and expired coupons. NTIA is committed to honoring to the greatest extent possible, consumer requests for coupons, including those in excess of more than 33.5 million, and has set aside funding for that specific purpose. NTIA is working closely with IBM to ensure that sufficient administrative funds are available to achieve this goal. NTIA will continue to update the Committee on the status of program funding.

3. On what date did NTIA first realize that the RFP did not account for the redistribution of unredeemed and expired coupons?

A: As discussed above, the RFP does account for distribution of coupons of more than 33.5 million by virtue of its structure as a Requirements Contract and the specific provisions cited in my response to Question 1. Additionally, as noted above, through the Q & A process made publicly available to all offerors following release of the RFP, NTIA made it clear that, "Assuming that some coupons will expire unused and therefore that the resulting funds are available for distribution to other consumers, it is theoretically possible for the offeror to be reimbursed for distribution of more than 22,250,000 coupons within the initial set of funds."⁴

³ Contract No. DG133507CQ0054 (NTIA-IBM), effective Aug. 15, 2007, Attachment I, at 45.

⁴ See Question Number 198.

4. On what date did NTIA first realize its contract with IBM did not account for the redistribution of unredeemed and expired coupons?

A: As discussed above, the contract awarded to IBM does account for distribution of more than 33.5 million coupons by virtue of its structure as a Requirements Contract and the specific provisions cited in response to Question 2. As noted above, in its PWS, IBM acknowledged the requirement to distribute new coupons from deobligated Initial Funds.

5. On what date did NTIA inform the Secretary of Commerce that the RFP did not account for the redistribution of unredeemed and expired coupons?

A: As discussed above, the RFP does account for distribution of more than 33.5 million coupons by virtue of its structure vis-à-vis Requirements Contracts and the specific provisions cited in response to Question 1. The Office of the Secretary has been briefed regularly on Coupon Program activities, including contract administration.

6. On what date did NTIA inform the Secretary of Commerce that the contract with IBM did not account for the redistribution of unredeemed and expired coupons?

A: As discussed in response to Question 2, the IBM contract does account for distribution of more than 33.5 million coupons. As also discussed above, the Office of the Secretary has been briefed regularly on Coupon Program activities, including contract administration.

7. On what date did NTIA first approach IBM (or vice versa) to discuss the fact that insufficient administrative funds would result in consumers not being able to receive coupons for which they had applied and for which there was still funding available?

A: NTIA and IBM work closely with each other and communicate regularly about operational issues, including consumer demand for coupons and redemption rates. NTIA is managing administrative funds so that more than 33.5 million coupons can be issued if demand continues. In May 2008, pursuant to the RFP and contract, NTIA initiated talks with IBM to discuss a “fair and reasonable” price for distribution of more than 33.5 million coupons. Those negotiations are ongoing. On July 18, 2008, pursuant to its rights under the requirements provisions of the contract to purchase additional goods or services, NTIA placed an order with IBM for 6 million additional coupons, *i.e.*, coupons distributed using funds from unredeemed and expired coupons. NTIA’s goal is to fulfill as many coupon requests as possible at the lowest cost and without changing coupon program messaging to consumers.

As of July 23, 2008, NTIA has accepted more than 11.3 million requests from households for more than 21.3 million coupons, of which 19.8 million have been mailed. Coupon requests continue to average approximately 105,000 per day. The first coupons were mailed on February 21, 2008, so data is available for the first nine weeks relating to coupons that have completed the 90-day “life cycle” – *i.e.*, the coupon has either been

redeemed or has expired. Of those coupons mailed during the first nine weeks, 45.8 percent have been redeemed. Assuming redemption rates remain consistent, as well as an increase in coupon demand around the holiday season, we estimate that our current system processing capability could enable us to distribute more than 50 million coupons through March 31, 2009.

8. Why did NTIA's first quarterly letter to the Committee on Energy and Commerce regarding whether additional funds would be needed for the TV Converter Box Coupon Program not mention that NTIA might not be able to redistribute unredeemed and expired coupons due to a shortfall of administrative funds?

A: NTIA has anticipated and planned for the eventuality that additional coupons beyond 33.5 million would be distributed. As already noted, on July 18, 2008, pursuant to its rights under the requirements provisions of the contract to purchase additional goods or services as stated in the contract, NTIA initiated action with IBM to order an additional quantity of 6 million coupons, *i.e.*, coupons distributed using funds from unredeemed and expired coupons. NTIA is confident, and committed to honoring to the greatest extent possible, consumer requests for coupons, including those in excess of more than 33.5 million, and has set aside funding for that specific purpose. NTIA is working closely with IBM to ensure that sufficient administrative funds within the existing statutory administrative cap are available to achieve this goal. NTIA's goal is to fulfill as many coupon requests as possible at the lowest cost and without changing coupon program messaging to consumers. The Committee's request is for NTIA to indicate in its Quarterly letters whether the \$1.5 billion authorized for the program will be adequate. NTIA continues to believe that this amount will be sufficient. NTIA will continue to update the Committee on the status of program funding.

9. On what approximate date does NTIA anticipate it will run out of administrative funds for the first phase of the coupon program?

A: NTIA is managing Coupon Program administrative funds so that more than 33.5 million coupons can be issued if demand continues. In May 2008, pursuant to the RFP and contract, NTIA initiated talks with IBM to discuss a "fair and reasonable" price for the distribution of more than 33.5 million coupons. Those negotiations are ongoing. On July 18, 2008, pursuant to its rights under the requirements provisions of the contract to purchase additional goods or services as stated in the contract, NTIA initiated action with IBM to order an additional quantity of 6 million coupons, *i.e.*, coupons distributed using funds from unredeemed and expired coupons. NTIA will continue to update the Committee on the status of program funding.

10. On what approximate date does NTIA anticipate it will run out of administrative funds for the second phase of the coupon program?

A. NTIA is managing Coupon Program administrative funds so that more than 33.5 million coupons can be issued if demand continues. In May 2008, pursuant to the RFP and

contract, NTIA initiated talks with IBM to discuss a “fair and reasonable” price for the redistribution of unredeemed and expired coupons. Those negotiations are ongoing. On July 18, 2008, pursuant to its rights under the requirements provisions of the contract to purchase additional goods or services as stated in the contract, NTIA initiated action with IBM to order an additional quantity of 6 million coupons, *i.e.*, coupons distributed using funds from unredeemed and expired coupons. NTIA will continue to update the Committee on the status of program funding.