

## Dissenting Views

of

Reps. John D. Dingell, Henry A. Waxman, Edward J. Markey, Rick Boucher, Frank Pallone, Jr., Sherrod Brown, Bart Gordon, Bart Stupak, Gene Green, Ted Strickland, Diana DeGette, Lois Capps, Michael F. Doyle, Tom Allen, Jim Davis, Janice D. Schakowsky, Hilda L. Solis, Charles A. Gonzalez, Tammy Baldwin, and Mike Ross

on

### Title I – Digital Television Transition Act of 2005 Budget Reconciliation Recommendations

#### SUMMARY

We support the transition to digital television (DTV). If done properly, it will enhance public safety communications, bring consumers the many benefits of advanced television, and provide spectrum that will enhance wireless competition and broadband services.

Unfortunately, the bill (in the form of legislation recommended to the Committee on the Budget) reported by our Committee is a failure. Driven by budget policy rather than telecommunications policy, the bill places the burden of the transition on those with the least income, and in its efforts to maximize revenues available for tax cuts for the wealthiest Americans, provides woefully inadequate resources to public safety. In the end, these policies may actually reduce revenues from the sale of spectrum, as bidders doubt the ability of the Government to follow through with its plans, and may well result in further delays in the digital transition.

The Republican plan summarily turns off millions of analog television sets – televisions that continue to be sold in stores today – without an adequate plan to assure consumers that they can restore the TV picture, without charge, by obtaining a digital-to-analog converter box.

The bill establishes a hard date of December 31, 2008, for the cessation of analog broadcasts, meaning that all televisions relying upon an over-the-air analog signal from the broadcaster will go dark. The Government Accountability Office (GAO) has estimated that 21 million households rely solely on over-the-air broadcasting and these homes average two television sets per household. It is also estimated that there are as many as 73 million sets that are not connected either to cable or satellite. In order to use these televisions, consumers will have to buy converter boxes, which are estimated to cost at least \$60 per box.

In order to aid in this transition, the bill would provide \$830 million for coupons worth a \$40 discount on each converter box. The bill would allow up to two boxes per household, but is not limited to households that rely solely on over-the-air transmission. The coupons would cover approximately 21 million sets, or less than a third of the need. Even if the program were limited to two coupons only for households relying solely on over-the-air broadcasts, half of those households would be left in the dark. Simply put, the Republican plan will run out of money before the need is met.

The bill assumes that consumers can afford a co-payment on each box, but it is known that those households relying on over-the-air broadcasts are often low-income, elderly, and minority households which can least afford the expense. Depending upon the cost of the converter boxes, this co-payment could be \$20, \$30, or more. In fact, the digital transition ordered by this bill is expected to impose an aggregate television tax in the form of the purchase of converter boxes of \$3.5 - \$4 billion, of which the bill covers less than 25 percent.

It is unjust to tax consumers for the DTV transition simply to try to foot the bill for a tax cut for the wealthiest of our citizens.

The sale of spectrum is estimated by the Congressional Budget Office (CBO) to yield \$10 billion and independent estimates place the value as high as \$28 billion, so there are public revenues available for the conversion.

The other important use of the funds would be for public safety communications. Terrorist attacks and recent hurricane disasters have reminded us of the problems of the interoperability of first responder communications systems.

The Office of Management and Budget has estimated the costs of achieving interoperability at \$15 billion or more. Yet in the interest of maximizing revenues to be put toward tax cuts favoring the wealthy, the bill provides just \$500 million for this purpose.

Democrats put forth a substitute at markup that failed on a straight party line vote. The substitute would have provided up to two vouchers per household covering the full \$60 cost of the converter box, thus eliminating the television tax imposed by the bill. The cost of the proposal was estimated by CBO to be \$3.5 - \$4 billion, including administrative costs, somewhat more than a bipartisan bill reported by the Senate Commerce Committee, which provided \$3 billion for the converter boxes. As described earlier, the reported bill provides less than \$1 billion, including administrative costs.

The substitute would have provided \$6 billion for public safety interoperability and E-911 implementation. This would be an important down payment on the full cost of upgrading first responder equipment. As described earlier, the reported bill provides just \$500 million for these purposes.

Last April, the House passed a budget resolution calling for \$35 billion in spending cuts and revenue enhancements such as spectrum sales, while providing \$70 billion in new tax cuts, more than half of which will go to the wealthiest one percent. The resolution passed without a single Democratic vote, because not only would it increase the deficit, but also it does not reflect our values.

The bill before us is a part of that debate. All of us should recognize that the public airwaves are owned by the public, yet this bill would sell those airwaves and return the money in the form of tax cuts that go primarily to the wealthiest, while imposing a television tax on the poorest

households. At the same time, faced with the decision of using a portion of the funds for even more tax cuts or the needs of public safety and our first responders, the bill chooses tax cuts. On both counts, we disagree.

## **PROBLEMS WITH THE REPUBLICAN BILL**

### **I. Ordinary Americans are being taxed unnecessarily to help pay for the digital television transition.**

Households relying solely upon free, over-the-air television to receive their news, weather, emergency alerts, and entertainment will be forced to help pay for this transition.

GAO has testified that as of 2004, 21 million out of 108.4 million households (19 percent) relied exclusively on free, over-the-air broadcast transmissions to receive television programming. According to GAO, a disproportionate number of these over-the-air households are low-income, with 48 percent having a household income of less than \$30,000. GAO also found that these households are disproportionately nonwhite and Hispanic. According to GAO, over-the-air households average 2.1 televisions per home.

It is estimated that there are as many as 73 million analog television receivers in use in the United States that are not connected either to cable or to satellite. Many households that subscribe to cable or satellite service also have over-the-air sets in their home that will be affected by the shut off of analog broadcasting. Other homes may have sets connected to satellite service yet continue to receive their local broadcast stations using over-the-air antennas.

When analog broadcasting ceases, analog-only television sets will no longer work without additional equipment. Consumers who want to continue using analog television receivers will need to obtain a digital-to-analog converter box or subscribe to a service that enables the continued viewing of analog signals. Because digital-to-analog converter boxes are projected to cost \$60 or more when manufactured in significant volume, equipping existing analog television sets with the necessary converter boxes could cost billions.

Faced with a choice of who will pay for the transition, the Committee voted to tax consumers to keep watching television. Under the bill, every consumer with an analog television will pay something to keep that set working after December 31, 2008. Although the bill provides for a limited distribution of \$40 coupons to requesting consumers, there is no guarantee of the cost of the boxes. Because converter boxes are projected to cost \$60 or more when manufactured in volume, the bill would require households lucky enough to receive a coupon to still pay \$20 or more per television set to keep it working. Households left out of the coupon distribution program will have to pay \$60 or more per set. In the aggregate, these consumer out-of-pocket expenses represent a \$3.55 billion tax.

But the Republican plan provides only \$990 million for a converter box program, of which \$160 million can be used for the sizeable administrative costs involved in printing and distributing coupon request forms, receiving applications, distributing coupons, and reimbursing retailers. So that leaves only \$830 million for the coupons, which will cover just a fraction of the millions of homes that will need a converter box. At \$40 per coupon, the bill only provides for 20.75 million coupons. With an estimated 73 million unconnected television sets and only 20.75 million covered by the bill, consumers who own the other 52.25 million sets will have to pay the full costs to obtain the necessary equipment.

Due to the limited funding in the bill, coupons will be available on a first-come, first-served basis. When the money runs out, many households will be out of luck. Homes most reliant on over-the-air broadcasts may not get coupons while vacation homes may. Households that rely solely on over-the-air signals for their televisions may be left without a way to receive even one subsidized box. This could result in the very target of the subsidy – the 21 million consumers who rely solely on over-the-air television reception – having to pay \$60 or more per television set to keep the set from going dark after the transition.

Also, the coupon program in the bill is also unnecessarily intrusive. Consumers will have to fill out an application and provide personal information to the Government just to watch television. The bill imposes numerous requirements for consumers, making it far less likely that the consumers most in need will participate. Consumers will have to apply for coupons, then wait an undetermined length of time to receive the coupon, and may have to provide credit card information to redeem the coupon. In addition, the bill restricts the converter boxes from having independent features or functions even if those features add little cost and would make the boxes more consumer friendly. This may further restrict demand for the boxes by preventing boxes from containing a remote control, the cable to connect the box to an analog TV set, an antenna to receive the digital signals, or other functions.

All told, this converter box program is woefully inadequate and needlessly complex. This program was carefully crafted to meet a budget goal, rather than help Americans make a smooth transition to digital television.

### *Democratic Substitute*

The Democratic substitute, as well as an amendment offered by Representative Markey, offered a far more simple and inclusive converter box program. Every household would receive a voucher redeemable for up to two free converter boxes. No one would have to apply and send personal information to the Government. Vouchers would be mailed to every household to minimize the inconvenience of the transition on consumers.

By providing two free boxes costing \$60 each, the Democratic program was expected to cost between \$3.5 to \$4 billion. Given that the Government is expected to receive at least \$10 billion from accelerating the transition, there will be more than sufficient funds to reimburse consumers for their full cost of the transition. It is only fair that the Government bears the costs of its decision to shut off analog broadcasting without making television viewers pay to continue to receive over-the-air signals.

In this way, the substitute measure would have reimbursed every household in the country with the full transition costs, ensuring that no household is left behind. Consumers deserve full restitution for the governmental choice to deprive them of the use of their television sets.

## **II. Public safety communications are shortchanged.**

In order to protect Republican tax cuts, this bill shortchanges our first responders regarding interoperability funding. The inability of first responders to communicate with each other during emergencies threatens the public's safety. It puts the lives of first responders and those in need of assistance at undue risk.

The problems with first responders not being able to communicate with each other are neither new nor rare. One needs only to watch the evening news to see examples of multi-jurisdictional emergencies, such as fighting large fires, searching for missing children, or responding to natural disasters, where interoperability among various public safety agencies is essential to protecting lives and property. Unfortunately, it takes extreme tragedies such as the collapse of the World Trade Center and the devastation of Hurricane Katrina to bring a sense of urgency to making interoperability a reality. This bill, however, does not reflect a proper sense of urgency.

Interoperability requires two elements, spectrum and funding to make use of the spectrum. We all agree that a hard date is necessary so public safety can receive the 24 megahertz of spectrum that it was promised years ago. But simply providing spectrum, without aggressive funding, will do little to ensure first responder interoperability.

The need is great. In 2003, the Office of Management and Budget estimated that interoperability would cost \$15 billion or more. First responders need to replace their outdated equipment. They need to pay for the planning and coordinating among appropriate public safety officials. They need to build redundant communications networks - vitally important in situations such as Hurricane Katrina in which the primary communications infrastructure is damaged or destroyed. Despite talking about the need, the Administration has failed to follow through with money. Since the attacks on the World Trade Center in 2001, the Federal Government has spent just \$1.3 billion on interoperable communications. This is wholly inadequate.

### ***Democratic Substitute***

Both the Democratic Substitute and an amendment offered by Representative Bart Stupak provided for a real down payment for public safety interoperability. The measures provided from auction revenues \$5.8 billion for first responders' interoperability needs. This money would be distributed through a grant program to local police, fire, and other emergency personnel and first responders across the country.

Unfortunately, this serious effort to fund an urgent national priority was rejected by the Committee, with the Stupak amendment failing by a vote of 24 to 24. Only after that rejection did the Republicans offer an amendment to commit a mere \$500 million for first responder

interoperability. We supported the amendment, but continue to believe that more funding is needed. First responders put their lives on the line for us on a daily basis. The least we can do is ensure that they have the basic tools they need to do their jobs safely.

In addition to consumers transition costs and public safety communications needs, the Substitute also would have funded an enhanced 911 system and provided funding to address the specific digital-television-related needs of low power television stations, television translators and stations in New York City and along the Mexican border. The Substitute provided that any excess above \$10 billion generated in the auction of the returned analog spectrum would be placed in a fund for broadband deployment in rural, underserved, and economically depressed areas and to promote the public use of advanced technologies and telecommunications for education and job training to ensure America's competitiveness in the 21st Century.

### **III. Consumer education is inadequate.**

The bill's measures to warn and educate consumers also fall short. Ensuring that households understand the transition and how they will be affected is crucial to maintaining a firm deadline. The consequences of a failure to inform consumers are serious. Households that do not understand what will occur could be quite surprised as they watch the Times Square New Year's Eve ball drop and then their television set suddenly shuts off.

Unfortunately, the bill fails to take a comprehensive approach to consumer education. GAO has cited an alarmingly low public awareness of the DTV transition and the need to conduct specific and targeted outreach campaigns. Although the bill provides \$5 million for public outreach, that figure is inadequate. In 2003, Berlin, Germany, successfully made the transition from analog to digital television. Notably, the Berlin Government spent more money on education (\$984,160) than it did on providing consumers with converter boxes (\$615,100 for 6,000 converter boxes). To cover all of America, with nearly 21 million over-the-air reliant homes, the bill commits to consumer education just five times what was spent for the Berlin region.

Additionally, the bill requires the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration to begin a consumer outreach campaign, but it fails to set specific targets and provide guidance to the agencies. The Government has been working to educate consumers about the DTV transition for some time. According to GAO, consumers appear to know little about the impending transition. We cannot afford to continue with more of the same.

The bill also requires the labeling of all analog-only televisions sold later than 180 days after enactment. The label is intended to make consumers aware of the need for additional equipment to view digital broadcast signals. Unfortunately, the content of the required label as set forth in the bill is cumbersome and unnecessarily confusing.

### *Democratic Substitute*

The Democratic Substitute added further efforts to educate and inform consumers about the transition. It required the FCC to create a DTV Transition Federal Advisory Committee to lead the effort to educate all consumers about the deadline for termination of analog television broadcasting and the equipment options consumers have after such termination. Getting the message out about the transition will not be easy. Many varied messages and distribution channels may be needed to reach various groups of individuals. For example, an information campaign to reach senior citizens will need to be structured differently than one to reach a household that may have Spanish-language dominant viewers. To ensure that the Committee would have the expertise needed to reach all consumers, the substitute measure required that the Advisory Committee be comprised of representatives from commercial and noncommercial broadcasters, cable operators, satellite providers, retailers and manufacturers of consumer electronics equipment, minority groups, Hispanic Americans, disability groups, senior citizens, commercial advertisers, business and consumer groups.

The Substitute also offered a two-sentence label that would simplify the warning provided to consumers who continue to buy analog televisions. It also required this label to be printed in both English and Spanish so as to increase the awareness to all affected consumers. In addition, the substitute would have required other analog-only equipment such as VCRs and DVD players to be so labeled.

Given the desire to shut off analog broadcasting, the Substitute directed the FCC to complete a proceeding to apply the Emergency Alert System to stations' digital broadcasts. Until such a standard is implemented, consumers who watch digital broadcast programming may not receive emergency warnings as they do when they are watching analog broadcasts. It would be shameful to force consumers to switch to a system of broadcasting that denies them emergency alert warnings for severe weather or national and local emergencies.

#### **IV. Hard date selected is impractical.**

The return of the broadcast spectrum for public safety and commercial wireless purposes is a critical goal. Every member of the Committee wholeheartedly supports a hard date. The certainty of a hard deadline to end analog transmission will focus consumers, industry, and government on the steps needed to transition to digital broadcasting. A hard deadline also will enable return of spectrum for critical public safety and commercial wireless uses. Once the broadcast spectrum is reclaimed, 24 MHz have already been earmarked for public safety use and another 60 MHz are available for advanced communications services such as wireless broadband. We all would like to see that spectrum reclaimed quickly. Some of us on the Committee are also committed to taking careful steps now so that any date that is set does not slip. Failure to accompany the hard date with a proper program to educate and equip consumers so they are not disenfranchised by Government actions could ultimately prolong the transition.

There is general agreement that 2009 is an appropriate time frame for the changeover. By 2009, it is anticipated that broadcasters will have received and made the transition to their final digital channel assignments, allowing for international coordination with Canada and Mexico. Given digital tuner requirements that phase in by 2007, consumers will have bought digital televisions for some time, reducing the inconvenience the transition will cause to some households. This time period also allows manufacturers to design and build digital-to-analog converter boxes in sufficient volume so that prices will fall from the current hundred-dollar levels. Most importantly, the window enables time for public outreach and comprehensive consumer education efforts about the transition.

The bill sets December 31, 2008, as the date for analog signals to cease. While this date is in an acceptable range, we question the wisdom of cutting off television on New Year's Eve prior to college football bowl games and other popular programming. This could force millions to go out on a holiday to find equipment to turn their television set back on. So, although we support a firm date in 2009, we note that the particular date selected in the bill is not practical.

#### *Democratic Substitute*

The Democratic Substitute provided for a hard date of April 7, 2009, the same date proposed by the Senate Commerce Committee.

#### CONCLUSION

We remain concerned that this bill does little to provide Members of this Committee assurance that the transition will be smooth and easy for the American people. Without a fully-funded and well thought-out program to educate and equip consumers, we predict that the bill will impose a widely unpopular burden on millions of Americans. In our view, consumers should not have to pay out of pocket for this government-mandated transition. Moreover, first responders – not millionaires – should be next in line for much-needed funding out of the proceeds of the spectrum auction.