

Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS & INFORMATION ADMINISTRATION
Washington, D.C.

In the Matter of)
)
Implementation and Administration of a) Docket No. 060512129-6129-01
Coupon Program for Digital-to-Analog)
Converter Boxes)
)

COMMENTS OF
DELOITTE FINANCIAL ADVISORY SERVICES LLP

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SUMMARY

Deloitte Financial Advisory Services LLP and its subcontractor Deloitte & Touche LLP (“Deloitte FAS”) are pleased to submit comments in response to the Notice of Proposed Rulemaking in the above captioned proceeding. As more fully discussed below, we offer the following comments to the National Telecommunications & Information Administration (“NTIA”):

- NTIA should consult with the Department of Justice regarding potential rules and certification requirements that should be in place at the outset of the program to facilitate the ability of law enforcement officials to investigate and prosecute any misdoings under the coupon program.
- Serial numbers should be placed on both coupons and on converter boxes so that controls can be implemented to minimize waste, fraud and abuse.
- Consumer eligibility certifications should be made under penalty of law, and include an acknowledgement that eligibility is subject to audit.
- NTIA may wish to consider whether to adopt some process for consumers to obtain replacement coupons in certain circumstances.
- In order to facilitate the ability of consumers to identify converter boxes eligible for reimbursement, NTIA should adopt a voluntary standard for a label that could be applied by manufacturers on approved boxes. In addition, NTIA should require the program administrator to provide consumers with a list of approved converter boxes and maintain a website listing of all approved converter box models.

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Deloitte Financial Advisory Services LLP and its subcontractor Deloitte & Touche LLP (“Deloitte FAS”) are pleased to submit comments in response to the Notice of Proposed Rulemaking in the above captioned proceeding. Along with Deloitte Tax LLP and Deloitte Consulting LLP (collectively, the “Deloitte US Firms”), the Deloitte US Firms are among the nation’s leading professional services firms, providing audit, enterprise risk, consulting, and financial advisory services through nearly 40,000 people in more than 90 cities. We have a wealth of experience in assisting both governmental and private sector entities manage critical risks to achievement of program objectives.

The National Telecommunications & Information Administration (“NTIA”) is wise to be concerned about the potential for waste, fraud and abuse in the digital-to-analog (“DTA”) converter box coupon program. While the benefit to individual households is small in dollar value (\$80), the aggregate scope of the program is unprecedented. We are unaware of any other analogous federal government program with a similar volume of small claims to be presented in a limited time period using a third party entity (the retailer) as the intermediary between the ultimate beneficiary and the U.S. government. Adopting workable program rules that meet the public policy objectives of the government, while meeting the legitimate business needs of private sector participants in the program should be paramount.

It would be naive to expect this program will escape unnoticed by individuals and entities that seek to profit from fraud. While there is a risk that individual households will falsely certify as to eligibility, the far graver danger is that criminal elements will obtain legitimately issued coupons and collude with retailers to redeem large numbers of those coupons, potentially without the sale of an actual converter box. If perpetrated on a large scale, the program could potentially be a mechanism for money laundering and other unlawful activities. For that reason, it is critical that NTIA adopt program rules that will facilitate the ability of the program administrator to detect abnormalities in real time that warrant further investigation, so that action can be taken swiftly against waste, fraud and abuse.

We recommend that NTIA consult with the Department of Justice (“DOJ”) regarding potential rules and certification requirements that should be in place at the outset of the program to facilitate the ability of DOJ and other law enforcement officials to investigate and prosecute any misdoings under the coupon program. In particular, close attention should be placed on

measures that will facilitate the ability to bring civil actions under the False Claims Act, 31 U.S.C. § 3729, and its criminal counterpart, 18 U.S.C. § 666. It is far better to design the appropriate safeguards up front, before the implementation of a program, than attempt to address issues as they arise in the course of program experience.

In adopting program rules, NTIA needs to balance carefully the competing considerations of seeking to minimize waste, fraud and abuse in an efficient, cost-effective manner against the equally important governmental objectives of ensuring that all households have the opportunity to obtain the benefit mandated by Congress. To the extent NTIA adopts program rules that make it more difficult for consumers to obtain and redeem their coupons, or regulations that create disincentives for retailer participation, the greater the likelihood that a significant number of consumers will not obtain converter boxes before the deadline for the digital television transition. And in the end, there will be a tremendous political outcry if millions of televisions go dark for a sizeable percentage of the U.S. population on February 18, 2009.

I. COUPON USE RESTRICTIONS

NTIA proposes that serial numbers be placed on coupons to keep track of the number of coupons issued, used and redeemed. We strongly support this measure, as use of serial numbers is essential to implementing software tools that can detect the submission of counterfeit coupons to retailers.

NTIA proposes to prohibit coupon holders from returning a converter box to a retailer for a cash refund or for credit towards the purchase of another item. As discussed more fully below, in the section addressing retailer rights and responsibilities, we recommend that retailers be

required to link the serial number of the actual converter box sold with each coupon redemption request. Linking each coupon with the serial number of the box purchased will be integral to implementing the proposed requirement that converter boxes may not be returned for cash or credit.

II. APPLICATION PROCESS

NTIA proposes that applicants be required to submit the following: (1) name; (2) address; (3) the number of coupons they require; (4) certification that they only receive over-the-air television using an analog-only (“NTSC”) television receiver; and (5) a certification that no other member of the household has or will apply for a coupon. We recommend that NTIA adopt program rules specifying that the necessary eligibility certifications be made under penalty of law, and incorporate language that requires eligible consumers to certify that they will maintain documentation necessary to demonstrate eligibility for receipt of benefits under this program for a period of two years and acknowledge that they may be audited regarding eligibility to receive benefits. In addition, the language should state that persons willfully making false statements on the form can be punished by fine or forfeiture under Title 18 of the United States Code, 18 U.S.C. § 1001.

Even with a certification requirement, there remains a non-trivial risk that certain households will falsely certify as to their eligibility. If, for instance, NTIA ultimately adopts a requirement that eligible households be limited to those that rely exclusively on over-the-air television, it may be difficult for the program administrator to implement procedures to verify such eligibility, as there are no readily accessible sources of information regarding household

subscription to cable or satellite television. Indeed, the debate over the number of households that would likely need to purchase converter boxes that preceded enactment of the authorizing legislation illustrates the challenge facing the agency in taking measures to verify program eligibility. Simply put, at present, there is a lack of information about who will participate in the program, where they are located, and whether prospective recipients share any unique demographic characteristics. We suggest that it will be critical to successful program execution to undertake surveys or other measures in advance of the application process to better identify the profile of prospective recipients so that appropriate fraud control measures can be incorporated into program administration.

NTIA proposes that consumers be able to request, submit and track applications over the Internet. We strongly encourage NTIA to adopt this proposal, as an electronic application process will facilitate the ability of the program administrator to implement system controls and procedures to detect potential waste, fraud and abuse. In particular, software tools can be used to detect the submission of duplicate requests in real time.

III. COUPON EXPIRATION

NTIA proposes that the expiration date for coupons shall be three months after coupon issuance, which would be the date upon which the coupon is placed in the U.S. mail. We believe this is a reasonable approach, assuming the program administrator has the capability to generate coupons in real time and immediately place them in the mail.

We note that inevitably there will be consumers that fail to use the coupon by the specified expiration date, and many of those consumers will have seemingly legitimate reasons

for their failure to use the coupon. Coupons will be lost or misplaced; mail will be misdelivered; some households will neglect to make arrangements at the post office to forward their mail when they move or leave the area for extended travel. Individuals that reside in a single household at the time of applying for the coupon may no longer reside in the same household by the time the coupon arrives in the mail, or at the time the coupon expires. Roommates move; people get divorced; young adults leave home. We do not suggest that all of these situations need to be addressed in the program rules; indeed, it would be impossible to foresee all the circumstances that may arise that pose a problem for the “two coupons per household” proposed rule.

While it is easy to adopt a bright line rule “Expired coupons will not be honored,” or “Once coupons are issued to a given individual in a household, no individual in that household may reapply,” NTIA may wish to consider whether to adopt some process for consumers to obtain replacement coupons in appropriate circumstances. Obviously, there will need to be system controls in place to prevent households from requesting replacement coupons after redeeming legitimately issued coupons. One issue to consider is whether to adopt a rule specifying certain circumstances will be presumptively reasonable justifications for obtaining a replacement coupon, and other circumstances will be dealt with on a case-by-case basis. We caution, however, that if the program administrator has to address numerous requests for coupon replacement on a case-by-case basis, it will consume administrative resources better spent to further critical program objectives, such as implementing measures to deter waste, fraud and abuse.

IV. CONVERTER BOX ELIGIBILITY

NTIA seeks comment on how the converter boxes eligible for participation in the coupon program should be identified for the consumer. We suggest a three-part strategy. First, NTIA should direct the program administrator to provide consumers with a list of approved converter boxes, ideally printed on the back of the coupon, or with a paper insert included in the coupon mailing. Second, NTIA should require the program administrator to maintain a website listing of all approved converter box models and publicize that website in the consumer education program that will be undertaken. Third, and most important, we strongly encourage NTIA to adopt a voluntary standard for a label that could be applied by manufacturers on approved boxes, specifying that the particular model has been approved for coupon reimbursement. While retailers play a critical role in the consumer education program, and a fundamental aspect of program administration will be to work with retailers to develop appropriate training and education of employees, relying solely on retailers to identify the appropriate models may pose some challenges. Retail positions in the consumer electronics departments of major retailers may be subject to high turnover, and not all retail employees will be motivated to become knowledgeable about which boxes are approved for reimbursement, and which are not. In short, urging manufacturers to utilize a small, clearly defined label may prove to be an effective means of adequately informing consumers as to which boxes they should purchase.

V. RETAILER RIGHTS AND RESPONSIBILITIES

NTIA proposes to issue \$40 coupons that can be redeemed only at a certified retailer when purchasing an eligible converter box. To keep track of the number of coupons issued, used and redeemed, as well as to minimize fraud and counterfeiting, NTIA intends to place identifying serial numbers on the coupons. While we strongly agree with placing identifying serial numbers on the coupons as a means to minimize fraud and counterfeiting, we would also suggest that retailers be required to submit the serial number of the actual converter box sold along with each coupon redemption request. We understand that in the retailer certification process, retailers will be required to certify under penalty of law that they will only submit coupons for redemption as a result of purchases made for converter boxes certified by NTIA, and that they have the ability to electronically provide NTIA with sales information related to coupons used in the purchase of coupon boxes, specifically tracking each serialized coupon by number with a corresponding certified converter box purchase. Incorporating the requirement to provide a valid converter box serial number along with each coupon redemption request provides an additional critical deterrent to retailers that may consider submitting valid coupons for redemption without actually selling a converter box.

Example - a certified retailer offers coupon eligible consumers \$20 for every legitimate and valid coupon they bring to the retailer. Consumers that are eligible for two coupons and either do not require a coupon, or require only one coupon, bring their unneeded coupons to the retailer. In turn, the retailer submits each coupon for redemption and receives \$40 from the

government, resulting in a \$20 profit. A well coordinated and widespread scheme such as this could result in significant fraud and abuse.

In order for this additional requirement to be effective in deterring waste, fraud and abuse, the program administrator would be responsible for validating converter box serial numbers with manufacturers and distributors, as well as verifying that each coupon is associated with a unique converter box serial number prior to distributing funds to retailers.

CONCLUSION

To conclude, we urge NTIA to balance carefully the competing considerations of seeking to minimize waste, fraud and abuse in an efficient, cost-effective manner against the equally important governmental objectives of ensuring that all households have the opportunity to obtain the benefit mandated by Congress. The use of automated systems and processes will be critical to successful implementation of this program, and we strongly support adoption of rules that will facilitate the ability of the program administration to put in place effective controls to address potential waste, fraud and abuse.

Respectfully submitted,

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