The DTV Transition: Unlimited Equipment Opportunities

While the DTV transition will almost certainly provide plentiful opportunities for equipment designers, manufacturers and importers, keeping abreast of the FCC rules is imperative.

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After many fits and starts, the United States is finally poised to replace its analog television technology with the technologically superior digital television (&quotDTV”&quot) format. The U.S. Congress has mandated that, beginning on February 17, 2009, all full-power television stations must cease their analog transmissions and transmit only digital signals. This rapidly approaching deadline will, among other things, result in more channel capacity for broadcasters, as well as open a huge swath of prime spectrum for other services. The DTV transition presents ample opportunities for equipment manufacturers worldwide to design and sell new products; but, it also underscores the importance of complying with the Federal Communications Commission’s importation, shipping and marketing regulations.

DTV Transition Opportunities

Analog television currently operates on channels 2 to 69 (58 to 806 MHz). DTV is much more spectrum efficient; the DTV transition will enable all TV stations to broadcast on channels 2 to 51 (58 to 698 MHz). Congress has decreed that by February 19, 2009, broadcasters must turn in their analog broadcast spectrum in the 698 to 806 MHz band (commonly known as the &quot700 MHz band&quot). After this transition, 108 MHz of spectrum in the 700 MHz band will be available for other services.

Sixty megahertz of commercial 700 MHz spectrum, estimated by the Congressional Budget Office to be worth nearly $13 billion, will be auctioned by the FCC no later than January 28, 2008. The FCC has already auctioned 24 MHz of 700 MHz spectrum, and an additional 24 MHz has been set aside for use by public safety entities.

The FCC will permit 700 MHz licensees a great deal of flexibility to use their spectrum to provide many different services, including: fixed and mobile digital broadcast operations, high-speed Internet access, two-way interactive services, and wireless private, internal radio networks. Moreover, with their expanded channel capacity, broadcasters will be able to offer new services through DTV such as multicasting several programs simultaneously, and datacasting, which will enable viewers to interact with multimedia content from their television sets.

The plethora of new services likely to be spawned by the DTV transition will

undoubtedly create a strong market for various types of new communications equipment. One category of equipment that will be especially in demand includes set-top boxes (&quotSTBs&quot). Advanced STBs will be needed for datacasting and similar services, to abstract multimedia content from digital broadcast streams and display it on television screens. Basic STBs will be required for the 35 to 40 million viewers that are currently unequipped to receive DTV. Congress has adopted a program, which will run from January 1, 2008 to March 31, 2009, for low-income U.S. households to be able to request two coupons, worth $40 each, to be used toward the purchase of up to two basic analog-to-digital STB converters.

The FCC is Strictly Enforcing its DTV Compliance Rules

While the DTV transition will almost certainly provide plentiful opportunities for equipment designers, manufacturers, and importers, it is vitally important that they comply with pertinent FCC rules. Section 303(s) of the Federal Communications Act (the &quotAct&quot) states that the FCC has the authority to require that all U.S. television receivers are capable of receiving all allocated frequencies. To that end, in 2002 the FCC amended Part 15 of its Rules by implementing the &quotDTV tuner requirement.&quot This rule requires that all television receivers (as well as other television interface devices such as VCRs, and DVD players) imported into the U.S. or shipped in interstate commerce be capable of receiving DTV signals over-the-air (i.e., contain DTV tuners). The FCC implemented a phased-in schedule beginning in 2004 that applied the DTV tuner requirement first to receivers with the largest screens, and then to progressively smaller screen receivers, and finally to other television receiving devices that do not include a viewer screen. As of March 1, 2007, all television receiving devices imported into the U.S. or shipped interstate must contain DTV tuners.

As illustrated by a several recent FCC actions, the ramifications for failing to comply with the FCC’s DTV transition rules can be quite severe. For example, on May 30, 2007, the FCC imposed a nearly $3 million fine against an importer of television sets that did not comply with the FCC’s DTV rules. In January 2007, after reviewing some U.S. Customs importation data, the FCC launched an investigation of a company that was apparently importing and shipping interstate television receivers without DTV tuners after the applicable deadlines had passed. The investigation revealed that this importer had imported and shipped interstate more than 22,000 non-DTV-compliant television receivers.

The FCC is taking a particular interest in ensuring that its DTV equipment rules are observed. The FCC has stated that since the DTV tuner requirement is intended to promote the important public policy goal of speeding DTV to consumers, violations of it and similar rules are more egregious than other types of equipment importation/marketing violations. Consequently, the FCC has imposed financial forfeitures based on a per-unit, rather than the typical per-model basis. This can lead to unusually high fines.

The Responsible Party for FCC Compliance

The FCC has stated that it intends to impose similar or even more severe sanctions on responsible parties that violate the DTV equipment rules, especially those that have a history of non-compliance. Because a television receiving device typically

does not transmit radio frequency energy, but rather generates RF energy for use within the device, the FCC classifies it as an &quotunintentional radiator.&quot The party responsible for ensuring FCC compliance of unintentional radiators is nearly always the manufacturer, or, in the case of imported equipment, the importer. An exception exists for situations when an entity not working under the authority of the responsible party modifies the device; in that case the modifying entity becomes the responsible party.

Regarding DTV equipment imported or sold in the U.S, it is incumbent upon the responsible party to understand and comply with the FCC's equipment authorization, importation, and marketing rules found in Parts 2 and 15 of its Rules. For DTV receiving equipment, these requirements include, but are not limited to, ensuring that the equipment is: (a) properly authorized (i.e., &quotverified" the responsible party must test the device to ensure it comports with FCC regulations and retain the testing records); (b) properly labeled as FCC-compliant; and (c) contains a DTV tuner and meets all other FCC requirements.

Violations of DTV and Other Rules Could Ensnare Even &quotNon-Responsible&quot Parties

Responsible parties are not the only entities that need to be aware of the FCC's rules. Section 302(b) of the Act, which prohibits the sale of non-compliant communications equipment, applies to anyone selling or advertising that equipment.

Earlier this year, the FCC implemented a new rule that requires any person who displays, sells, or rents analog-only television receiving equipment to display a &quotConsumer Alert&quot stating, among other things, that the device is analog-only, and will require a converter box to receive over-the air broadcasts after February 17, 2009 due to the DTV transition. The FCC recently issued a citation to a company that failed to include the Consumer Alert on its Internet website that displayed analog television receivers for sale. The FCC has also issued directives to retail outlets, instructing them not to sell certain types of non-compliant (non-DTV) communications devices, or face financial penalties.

Familiarity Breeds Compliance: Stay Aware and Informed of the FCC's Rules

The DTV transition promises numerous opportunities for the development of new products and services. Due to its Congressional mandate, the FCC is doing everything it can to ensure that the DTV transition proceeds smoothly and rapidly. To that end, the FCC is vigorously enforcing its DTV rules and will not hesitate to investigate and sanction non-compliance. Perhaps acknowledging that other services will soon be launched in the 700 MHz band, the FCC has stepped up enforcement of its other equipment compliance rules. Consequently, it is critical that all manufacturers, importers, and marketers of DTV and other communications equipment know and comply with existing and future FCC rules to make sure that their products can be sold in the U.S. without financial forfeitures or other unnecessary regulatory problems.

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