

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

DIRECT DIAL
(202) 371-7200
DIRECT FAX
(202) 661-8233
EMAIL ADDRESS
JQUALE@SKADDEN.COM

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
SAN FRANCISCO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

September 25, 2006

VIA ELECTRONIC DELIVERY

National Telecommunications and Information Administration
1401 Constitution Avenue, Room 4713
Washington, D.C. 20230
ATTN: Milton Brown - Office of the Chief Counsel

RE: Docket No. 060512129-6129-01

Dear Mr. Brown:

On behalf of Gemstar-TV Guide International, Inc., enclosed please find comments in response to the National Telecommunications and Information Administration's Notice of Proposed Rulemaking in the above-referenced docket seeking comment on the methods it should adopt to implement the digital-to-analog converter box coupon program pursuant to the Digital Television Transition and Public Safety Act of 2005.

Should you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,


John C. Quale

Counsel to Gemstar-TV Guide International, Inc.

Enclosure

**Before the
UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION**

)
)
Request for Comment and Notice of
Proposed Rules to Implement and
Administer a Coupon Program for
Digital-to-Analog Converter Boxes
)
)

Docket No. 060512129-6129-01

COMMENTS OF GEMSTAR-TV GUIDE INTERNATIONAL, INC.

Gemstar-TV Guide International, Inc. ("Gemstar-TV Guide") hereby responds to the National Telecommunications and Information Administration's ("NTIA") Notice of Proposed Rulemaking ("Notice") seeking comment on the methods it should adopt to implement the digital-to-analog converter box coupon program pursuant to the Digital Television Transition and Public Safety Act of 2005 ("DTV Transition Act").¹

I. INTRODUCTION AND SUMMARY

As detailed below, Gemstar-TV Guide believes that NTIA should accept self-certification of digital-to-analog converter boxes that contain hardware modifications to convert and pass through all information contained in over-the-air digital broadcast television signals, including information necessary for operation of Gemstar-TV Guide's TV Guide On Screen electronic program guide ("EPG") or other third-party guides. Viewers with analog television sets and receivers should enjoy no less functionality than they do

¹ See *Public Law* 109-171 Sec 3001 et seq.

today, following the digital transition. In addition, Gemstar-TV Guide submits that NTIA also should accept for certification converter boxes that contain software necessary for the converter box to provide the TV Guide On Screen EPG functionality, or other third-party guides, to consumers. NTIA has correctly proposed that converter boxes be capable of supporting the Program and System Information Protocol ("PSIP") which broadcasters transmit over-the-air to populate program guides. Certification of converter boxes containing these capabilities, which include enhanced parental control features, will ensure that consumers receive the full benefits of the transition to digital broadcasting, as well as the continued use and enjoyment of their analog television receivers and recording devices. Inclusion of these capabilities into converter boxes, moreover, should add virtually no costs to the retail price of digital-to-analog converter boxes. If these capabilities are not subject to certification under the converter box coupon program, equipment manufacturers will likely be reluctant to include these features in any converter box models and, if so, consumers will be unable to purchase any converter box (with or without the coupon program) that contains these capabilities.

II. GEMSTAR-TV GUIDE, A LEADER IN EPG TECHNOLOGIES

Gemstar-TV Guide is a leading media and technology company that develops, licenses, and distributes EPG technologies, products, and services to meet the television guidance and home entertainment needs of consumers. Gemstar-TV Guide has pioneered the development and deployment of EPG products, features, and services for nearly 20 years. In today's increasingly complex television environment, Gemstar-TV Guide's principal mission is to enhance and simplify consumers' television viewing experience. To

accomplish this goal, Gemstar-TV Guide develops EPG technologies, products, and services that provide a comprehensive solution to the television guidance needs of consumers worldwide. Gemstar-TV Guide believes that EPGs have become an essential tool for television viewers to identify, organize, and select the appropriate programming that they want in today's expanding universe of video programming alternatives.

Consumers need more advanced tools to help them navigate through the complex array of television offerings, organize their choices, and maximize their enjoyment of the diverse entertainment offerings available to them. In this regard, Gemstar-TV Guide's EPGs assist television viewers by displaying information about the programming available in their community by whatever method the viewer receives service (over-the-air broadcast, cable, satellite, or telco). Gemstar-TV Guide's EPGs also allow television viewers to retrieve program listings, detailed program descriptions, and other content information related to the programming available to them.

Finally, Gemstar-TV Guide's EPGs assist with the programming needs of parents by including features that assist parents with the identification of programming suitable for children. Gemstar-TV Guide's EPGs color code programming by category (e.g., blue for children's programming), provide program rating information as a quick reference icon when a program is highlighted, identify reasons for program ratings (e.g., strong language), and offer search features to identify science and educational and other programming suitable for children. Gemstar-TV Guide's EPGs also provide parents with the ability to disable channels that parents deem unsuitable for viewing, with the result that the programs on that channel do not show up on the program guides.

III. TV GUIDE ON SCREEN

Gemstar-TV Guide provides the TV Guide On Screen EPG over-the-air directly to consumers who purchase Gemstar-TV Guide-enabled television receivers and recording devices. The technology and capabilities of TV Guide On Screen are integrated into various consumer electronics devices, including television receivers and digital recording devices, such as digital video recorders. TV Guide On Screen provides viewers with updated on-screen program schedule information, detailed program information (such as ratings and closed-captioning identifiers), and program selection capabilities. Using their remote control device, consumers can scroll through the program guide, obtain detailed information about programming, and change the channel to the selected programming.²

TV Guide On Screen is the leading program guide currently available to consumers that receive television service from over-the-air broadcast signals. Consumers can operate the TV Guide On Screen program guide by simply plugging in their Gemstar-TV Guide-equipped television or recording device and activating the guide – no other steps or data connections (e.g., telephone) are required. Because the TV Guide On Screen technology is integrated into televisions and recording devices, the TV Guide On Screen service is available at no additional charge to any viewer who purchases a Gemstar-TV Guide-equipped television receiver or recording device. In this regard, the consumer does not have

² Gemstar-TV Guide also provides TV Guide Interactive, the leading on-screen interactive program guide for the cable and satellite industries. TV Guide Interactive is the most widely deployed interactive digital cable guide, currently delivered to more than 13 million digital cable subscribers pursuant to agreements with numerous cable system and satellite operators.

to pay any recurring charges for use of the Gemstar-TV Guide EPG (unlike consumers that pay recurring monthly cable and satellite fees).

Gemstar-TV Guide has entered into multi-year licensing agreements with virtually all of the top consumer electronics manufacturers, including LG/Zenith, Matsushita (Panasonic), Mitsubishi, Pioneer, Samsung, Sharp, Sony, Thomson (RCA), and Toshiba to incorporate the TV Guide On Screen technology and functionality into their television receivers and recording devices. Because of these agreements, over 12 million Gemstar-TV Guide-enabled television sets and recording devices have been purchased by consumers throughout the U.S.³ Gemstar-TV Guide-equipped televisions are located in many of the approximately 21 million households that rely solely on over-the-air broadcast signals to receive television service.⁴

To distribute TV Guide On Screen programming data, Gemstar-TV Guide has entered into agreements with local broadcast stations in virtually all U.S. markets to transmit data over the vertical blanking interval ("VBI") of the stations' analog television signals to TV Guide On Screen-enabled devices. In the digital television context, Gemstar-TV Guide has agreements in place to carry TV Guide On Screen program updates in the local broadcaster's main digital signal. Gemstar-TV Guide formats its program data in over-the-air signals so that a consumer's EPG-capable equipment receives schedule and program

³ In 2005 alone, the TV Guide On Screen EPG was incorporated into over 100 new consumer electronic models.

⁴ See *Digital Broadcast Television Transition, Estimated Cost of Supporting Set-Top Boxes to Help Advance the DTV Transition*, Government Accountability Office Report 05-258T at p.3 (rel. Feb. 17, 2005). The National Association of Broadcasters has estimated that more than 70 million analog televisions rely solely on over-the-air broadcast television signals to receive service. See *NTIA Proposal on DTV Converter Box Voucher Program*, NAB Press Release (rel. July 24, 2006).

information corresponding to the consumer's geographic area, method of reception, and system configuration. The Gemstar-TV Guide-enabled device automatically retrieves, processes, and makes the EPG information available to viewers.

In addition to these agreements, Gemstar-TV Guide is working with the Society of Cable Telecommunications Engineers ("SCTE"), cable companies, and equipment providers on a freely-available standard known as Digital Video Standard 706 "VBI-in-MPEG" ("DVS-706") to carry the company's data once the transition to digital broadcasting is complete. This standard would allow carriage of existing analog standard definition video VBI signals in digital broadcast transmissions. Implementation of this standard enables conversion of analog VBI data in analog signals into digital television signals in digital devices and conversion of data in digital signals to analog VBI data in digital-to-analog converters.⁵ Once the transition to digital broadcasting has been completed, Gemstar-TV Guide intends to send TV Guide On Screen EPG data using DVS-706 in over-the-air digital signals ("Digital VBI Data"), which can be converted to analog VBI data by digital-to-analog converter boxes for use by existing analog television receivers with a TV Guide On Screen EPG.

IV. NTIA SHOULD PERMIT MANUFACTURER SELF-CERTIFICATION OF DIGITAL-TO-ANALOG CONVERTER BOXES CAPABLE OF PASSING THROUGH "DIGITAL VBI DATA" AND WHICH CONTAIN EPG SOFTWARE

Section 3005(d) of the DTV Transition Act defines a digital-to-analog converter box for purposes of the coupon program as containing "features or functions ... necessary to

⁵ VBI data potentially supported by DVS-706 also includes Nielsen ratings data and North American Basic Teletext Specification data.

enable a consumer to convert any channel broadcast in the digital television service ... and may also include a remote control device."⁶ To implement the DTV Transition Act's mandates for a digital-to-analog converter box program, the Notice seeks input on, among other things, the characteristics and capabilities that manufacturers may include when self-certifying that their digital-to-analog converter boxes are compliant with the DTV Transition Act.⁷

The Notice proposes that a digital-to-analog converter box should be capable of "receiving, decoding, and presenting video and audio from digital television transmissions as specified in [Federal Communications Commission ("FCC")] Part 73 [regulations] and [Advanced Television System Committee ("ATSC")] Standards A/52A, A/53C, and A/65B."⁸ The Notice also requests comment on several NTIA proposals for other standards and capabilities that should be incorporated into converter boxes certified under the program, including the ability of the converter box to process all ATSC radio frequency signals and inclusion of remote control functionality with the converter box.⁹ Finally, the Notice requests that parties identify additional capabilities that NTIA should consider for digital-to-analog converter boxes certified under the coupon program.

⁶ *Public Law* 109-171 at § 3005(d).

⁷ NTIA has proposed to require manufacturers to self-certify that converter boxes meet the standards outlined in the rules. *See Notice* at p.5.

⁸ *See Notice* at p.5.

⁹ *See Notice* at p.5. Additional standards and capabilities proposed in the Notice include the following: delivery of National Television Standards Committee ("NTSC") composite video and stereo audio; delivery of channel 3 or 4 switchable NTSC radio frequency output for television receivers; compliance with FCC requirements for closed captioning, emergency alert systems and required parental controls; and, ability to tune all television channels 2-69.

A. Digital-to-Analog Converter Boxes Containing Hardware Modifications to Support DVS-706 and Convert Digital VBI Data Should be Eligible for Certification

Consistent with the capabilities identified in the Notice, Gemstar-TV Guide submits that digital-to-analog converter boxes containing hardware modifications to support DVS-706 and convert Digital VBI Data should be eligible for certification. As noted above, TV Guide On Screen data is carried in the VBI of analog over-the-air broadcasts in virtually all U.S. markets to provide for operation of Gemstar-TV Guide-enabled television receivers and recording devices. Once analog broadcasts are terminated in February 2009, Gemstar-TV Guide expects that data necessary for operation of the TV Guide On Screen EPG will be carried in digital broadcast signals through use of DVS-706.

1. Certification of Converter Boxes that Support DVS-706 and Convert Digital VBI Data is Fully Consistent with the Policies Underlying the Statute

Certification of converter boxes that support DVS-706 and convert and pass through Digital VBI Data (or data for other EPGs) will ensure that all information contained in the digital signal is made available to analog viewers. Certification of these converter boxes is entirely consistent with the primary goal of the digital-to-analog converter box coupon program: to ensure the continued full use and enjoyment of consumers' legacy analog receivers and recording devices for reception of over-the-air broadcast programming once the transmission to digital broadcasting is complete.¹⁰ Viewers who rely on analog over-the-air broadcast signals should enjoy the same features and functionalities after the transition as they do today.

¹⁰ See *H.R. Rep.* 109-362 at p.201 (2005).

In addition, as noted above, TV Guide On Screen contains functionalities that assist parents in the selection of programming suitable for children. Support for DVS-706 and conversion and pass through of Digital VBI Data by digital-to-analog converter boxes, therefore, would ensure the continued availability of these features to parents, greatly aiding their ability to select programming suitable for children. Incorporation of capabilities to support DVS-706 and convert Digital VBI Data would ensure that consumers receive an uninterrupted viewing experience, including continued use of parental control features, once the transition to digital broadcasting is complete.

2. Failure to Certify Converter Boxes that Support DVS-706 and Convert Digital VBI Data Would Eliminate Customary Features and Functionalities, Frustrating and Confusing Customers

Many U.S. households that receive television service solely from over-the-air broadcast signals have purchased Gemstar-TV Guide-enabled television receivers and recording equipment and use the TV Guide On Screen EPG on a regular basis. Consumers purchased these analog devices with the expectation that they would be able to use and enjoy the TV Guide On Screen EPG for the entire life of the equipment. To meet these consumers' expectations for the continued full use and enjoyment of their analog television receivers and recording devices, NTIA should permit certification of digital-to-analog converter boxes containing hardware modifications to support DVS-706 and convert and pass through Digital VBI Data. Otherwise, consumers may be stranded with unusable or only partly functional television receivers or recording devices.

Failure to certify these converter boxes would result in the inability of over-the-air households with existing Gemstar-TV Guide-enabled analog equipment to use the EPG in

their receivers after termination of analog broadcasts. The corresponding elimination of customary viewing features and functionalities would greatly frustrate consumers who expect continued use of the TV Guide On Screen EPG. Gemstar-TV Guide expects NTIA to advise U.S. consumers that the transition to digital broadcasting will have no effect on their use and enjoyment of analog equipment so long as the consumer purchases a digital-to-analog converter box. Because of this guidance, consumers would assume that all of the features and functionalities of their existing analog television receivers and recording devices would be available after the transition to digital broadcasting has been completed. The inability to access and use the TV Guide On Screen EPG after the transition would greatly confuse consumers and may cause them to question NTIA's prior guidance.

Finally, consumer electronics makers and Gemstar-TV Guide have dedicated significant resources to the development, marketing, and distribution of the TV Guide On Screen EPG to households that receive television service from over-the-air broadcast signals. Failure to support DVS-706 and convert Digital VBI Data in self-certified devices could threaten these efforts, as well as continued innovation in the development of program guides for households that receive television service solely from over-the-air broadcast transmissions.

B. Inclusion in Digital-to-Analog Converter Boxes of Software Necessary for Operation of the TV Guide On Screen EPG or Other Third-Party Guides is Also Fully Consistent with the Policies Underlying the Statute

NTIA also should permit certification of digital-to-analog converter boxes that contain software necessary to provide the TV Guide On Screen EPG, or other third-party guides, to consumers on their analog television receivers. Certification of such converter

boxes is fully consistent with the policies underlying the DTV Transition Act and NTIA's Notice. As the DTV Transition Act makes clear, and the NTIA Notice contemplates, certified digital-to-analog converter boxes may operate with remote control functionality. To ensure that converter box remote controls are fully functional, digital-to-analog converter boxes should be loaded with software that enables their operation with the TV Guide On Screen EPG or other over-the-air programming guides.

Quite correctly, the Notice, as explained above, proposes that converter boxes be capable of receiving, decoding and presenting video and audio from digital television transmissions as specified in FCC Part 73 and ATSC Standards A/52A, A/53C and A/65B. Standard A/65B, which implements the "Program and System Information Protocol for Terrestrial Broadcast and Cable," or PSIP, has been adopted by the FCC and includes data transmitted by broadcasters in over-the-air signals to populate on-screen program guides, as well as data required for proper channel tuning.¹¹ Gemstar-TV Guide strongly supports this proposal which ensures viewers the ability to navigate in the digital world. For the same reasons, NTIA should accept for certification digital-to-analog converter boxes containing the software for the TV Guide On Screen EPG or other third-party guide.

Manufacturers have expressed an interest in incorporating the software modifications necessary for operation of the TV Guide On Screen EPG in digital-to-analog converter boxes. These manufacturers have indicated that such software modifications should have no

¹¹ See *In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 04-192 (rel. Sept. 7, 2004). According to the FCC, the PSIP permits "improvements to program guides, closed captioning, and use of the v-chip, and enables channel number navigation using the familiar analog channel numbers to tune to new digital channel assignments." *Id.* at fn 356.

effect on the normal operations of the converter box and should increase the utility of the converter box to consumers, enabling them to better manage, sort, and select programming available to them in their area.

Finally, as noted above, the TV Guide On Screen EPG contains capabilities that assist parents in the selection of programming suitable for children. These capabilities permit parents to obtain information about the programming available in their area and to select educational and science programming suitable for children. Certification of converter boxes that contain software for operation of the TV Guide On Screen EPG, therefore, would provide for the widespread availability of these features to parents, greatly aiding their ability to locate programming suitable for children.

V. THE COSTS OF HARDWARE MODIFICATIONS TO CONVERT DIGITAL VBI DATA AND SOFTWARE MODIFICATIONS TO OPERATE THE GEMSTAR-TV GUIDE EPG ARE MINIMAL

Gemstar-TV Guide is working with converter box manufacturers on the design and development of the hardware modifications necessary for support of DVS-706 and conversion of Digital VBI Data, as well as the software modifications necessary for operation of the Gemstar-TV Guide EPG on digital-to-analog converter boxes. Based on these discussions, Gemstar-TV Guide believes that incorporation of these capabilities should add virtually no costs to the design and manufacture of certified converter boxes, as long as these capabilities can be added while converter boxes are being designed. Incorporation of these technical capabilities, therefore, should not substantially increase the retail price of digital-to-analog converter boxes. Design and development of these capabilities also should not delay the deployment of digital-to-analog converter boxes.

NTIA also should permit certification of digital-to-analog converter boxes that contain these capabilities to ensure that equipment providers' design and development efforts continue. Absent a clear indication from NTIA that converter boxes containing such capabilities will be supported by the converter box coupon program, equipment providers will likely be reluctant to continue with these efforts out of a concern that converter boxes containing such capabilities will not be eligible for certification. As a result, millions of consumers would be unable to purchase any converter box (with or without the coupon subsidy) that contains the hardware modifications necessary to support DVS-706 and convert Digital VBI Data or the software modifications necessary for operation of the TV Guide On Screen EPG. Prompt action by NTIA is necessary, therefore, to provide equipment manufacturers with the necessary notice to incorporate these capabilities into the design process in light of the February 18, 2009 termination of analog broadcasts.

VI. CONCLUSION

Gemstar-TV Guide urges NTIA to permit certification of digital-to-analog converter boxes that contain hardware modifications necessary to support DVS-706 and convert Digital VBI Data so that consumers can continue to receive the full use and enjoyment of their Gemstar-TV Guide-equipped television receivers and recording devices. NTIA also should accept for certification converter boxes that contain software modifications necessary for operation of the TV Guide On Screen EPG and similar electronic program guides. Certification of converter boxes containing these capabilities will ensure that consumers receive the full benefits of the transition to digital broadcasting without any concomitant increase in the retail price of digital-to-analog converter boxes.

Respectfully submitted,

GEMSTAR-TV GUIDE INTERNATIONAL, INC.

/s/ _____
Glen Dudek
Vice President, Advanced Technology
TV Guide On Screen
209 Burlington Road, Suite 101
Bedford, MA 01730

By: /s/ _____
John C. Quale
John M. Beahn
of
Skadden, Arps, Slate, Meagher &
Flom LLP
1440 New York Avenue
Washington D.C. 20005
(202) 371-7000

Its attorneys