

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	MB Docket No. 03-185
Commission’s Rules to Establish Rules for Digital	)	
Low Power Television and Television Translator	)	
Stations	)	
	)	
Expanding the Economic and Innovation	)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	
	)	
Amendment of Part 15 of the Commission’s Rules	)	ET Docket No. 14-175
to Eliminate the Analog Tuner Requirement	)	

To: The Commission

**COMMENTS OF  
THE CONSUMER ELECTRONICS ASSOCIATION**

**I. INTRODUCTION**

The Consumer Electronics Association (“CEA”)<sup>1</sup> respectfully submits these comments in response to the above-captioned Third Notice of Proposed Rulemaking (“*Notice*”).<sup>2</sup> CEA welcomes the Commission’s proposal to modify Section 15.117(b) of the Commission’s rules to allow broadcast television (“TV”) receiver manufacturers and importers to ship and import devices without analog broadcast tuners. The Commission’s reading of Section 15.117(b) to impose an analog tuner mandate is no longer necessary to achieve the purpose of Section 15.117.

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<sup>1</sup> CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA’s more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multinational corporations to specialty niche companies, CEA members cumulatively generate more than \$211 billion in annual factory sales and employ tens of thousands of people.

<sup>2</sup> *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) (“*Notice*”).

All full-power stations and the vast majority of LPTV and TV translator stations have already transitioned to digital, and consumers can continue to rely on existing devices to access any analog signals from local LPTV and TV translator stations. Indeed, due to the product development cycle, virtually all TV stations, except for a small minority of LPTV and TV translator stations, most likely will be digital by the time the first generation of digital-only devices comes to market. In addition, as the Media Bureau has found in granting waivers of the requirement with respect to several specific devices, eliminating the analog tuner mandate benefits consumers and serves the public interest. Thus, regardless of how the Commission decides the other issues raised in the *Notice*, there is no reason to retain the analog tuner requirement.

## **II. THE COMMISSION SHOULD ADOPT ITS PROPOSAL TO ELIMINATE THE ANALOG TUNER REQUIREMENT**

As proposed in the *Notice*, the Commission should revise Section 15.117(b) of its rules to eliminate any possible interpretation that the rule obligates manufacturers to integrate analog tuners in TV receivers.<sup>3</sup> The Commission also should remove from Section 15.117 any requirements that apply to analog tuners, including paragraphs (f) and (g), which the rule indicates “shall not apply to the features of such sets that provide for reception of digital television signals,” and, accordingly, must apply only to analog tuners.<sup>4</sup> As explained below, the analog tuner requirement is not mandated by statute, and thus the Commission can remove the mandate from its rules. In addition, the analog tuner requirement is no longer necessary to achieve the purpose of Section 15.117, given that all full-power stations and the vast majority of LPTV and TV translator stations are currently operating in digital. Due to the benefits of

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<sup>3</sup> *Id.* at 12556-67 ¶ 54.

<sup>4</sup> *Id.* at 12557 ¶ 55 & n.135 (citation omitted) (internal quotation marks omitted).

eliminating the mandate and the *de minimis* impact on consumers, as identified by the Bureau in multiple cases, repealing the analog tuner requirement clearly would serve the public interest.

**A. The Commission Has Authority to Remove the Analog Tuner Requirement**

Nothing in the All Channel Receiver Act of 1962 (“ACRA”) mandates inclusion of an analog broadcast TV tuner in receiving devices.<sup>5</sup> ACRA generally affords the Commission authority to “require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting.”<sup>6</sup> As the *Notice* explains, however, while ACRA “grants [the FCC] authority to require that broadcast TV receivers receive all broadcast channels,” it “does not require the Commission to impose such a rule.”<sup>7</sup> Because it does not mandate a general rule regarding receipt of all broadcast channels, the statute obviously also does not require the Commission to impose a specific obligation with respect to analog broadcast TV tuners. Thus, the Commission plainly has authority to modify its rules as proposed in the *Notice*.

**B. In Light of the Completed Full-Power Digital Transition and the Imminent Completion of the LPTV and TV Translator Digital Transition, the Analog Tuner Mandate No Longer Is Necessary to Achieve the Purpose of Section 15.117**

Section 15.117(b) provides that “TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service.”<sup>8</sup>

Intended to ensure that TV receiving equipment includes functionality to access new channels and formats,<sup>9</sup> Section 15.117(b) is a successor to former Section 15.70(a) of the Commission’s

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<sup>5</sup> Pub. L. No. 87-529, 76 Stat. 150 (codified at 47 U.S.C. § 303(s)).

<sup>6</sup> *Id.*

<sup>7</sup> *See Notice*, 29 FCC Rcd at 12556-57 n.131 (citing 47 U.S.C. § 303(s)).

<sup>8</sup> 47 C.F.R. § 15.117(b).

<sup>9</sup> *Notice*, 29 FCC Rcd at 12556-57 ¶¶ 54-55.

rules, which implemented ACRA in 1963. The original rule was designed to ensure that analog TV sets could receive UHF channels, not just VHF channels.<sup>10</sup> Since then the Commission has amended and/or expanded its interpretation of the requirements on multiple occasions to reflect developments in technology, including in 2002 when the Commission updated the rule to require DTV reception capability in TV broadcast receivers.<sup>11</sup> At that time, the Commission indicated that its goal was to ensure that TV receiving equipment could adequately receive DTV signals on all of the TV channels.<sup>12</sup>

While it may have made sense initially for consumer equipment to include dual analog/digital tuners capable of receiving NTSC and ATSC signals over the air, this is no longer the case. All full-power stations and the vast majority of LPTV and TV translator stations have already migrated to digital,<sup>13</sup> and all Class A TV stations must cease analog broadcasts by September 1, 2015.<sup>14</sup> Even if the Commission ultimately extends the September 1, 2015 digital

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<sup>10</sup> See *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978, 15990 ¶ 26 (2002) (“*DTV Review Second R&O*”) (“[I]n 1962, when the ACRA was enacted, Congress’s focus was on the UHF/VHF aspect of the general issue of ensuring that TVs would receive all allocated channels – the specific problem at that time was the lack of TV sets that could receive UHF channels.”).

<sup>11</sup> *Id.* at 15998-99 ¶¶ 45-46. For purposes of 47 C.F.R. § 15.117, the term “TV broadcast receiver” includes “devices, such as TV interface devices and set-top devices that are intended to provide audio-video signals to a video monitor, that incorporate the tuner portion of a TV broadcast receiver and that are equipped with an antenna or antenna terminals that can be used for off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter.” 47 C.F.R. § 15.117(a). When the Commission defined a TV broadcast receiver to include such devices, it was focused on whether those devices – which already were equipped with analog tuners in order to receive the then-standard analog broadcast signals – should include digital broadcast tuners because of the impending DTV transition. It was not focused on whether to require those devices to include analog broadcast tuners, because they already did.

<sup>12</sup> *DTV Review Second R&O*, 17 FCC Rcd at 15999 ¶ 46.

<sup>13</sup> *Notice*, 29 FCC Rcd at 12556-57 ¶¶ 54-55.

<sup>14</sup> See *id.* at 12538 n.6.

transition deadline for LPTV and TV translator stations as the *Notice* proposes, continued analog operations by a minority of low-power stations will be temporary. The Commission’s rationale for proposing to extend the deadline is solely to allow LPTV and TV translator stations to avoid incurring the costs of digital transition before completion of the broadcast incentive auction and repacking process.<sup>15</sup> There is no suggestion that LPTV or TV translator stations will continue to broadcast in analog over the long term or that consumers need the ability to access LPTV or TV translator analog signals over the long term. Given the limited time remaining for analog broadcasting and the lead time that would necessarily precede the introduction of the first generation of digital-only devices, it makes sense to eliminate the requirement now.<sup>16</sup>

**C. For Consumers, the Benefits of Manufacturing Devices Without Analog Tuners Will Outweigh Any Potential Downsides**

Repealing the analog tuner requirement will benefit consumers by eliminating unnecessary costs, encouraging energy efficiency, and improving the user experience with TVs.<sup>17</sup> As the Bureau has found on multiple occasions, including an analog tuner in a device increases its weight, size, power consumption, and computational needs.<sup>18</sup> For instance, in one order, the Bureau noted TiVo’s explanation that “including ‘analog [broadcast and cable] functionality increases the retail price of each device by between \$100 and \$150 depending on the model.’”<sup>19</sup> In another order, the Bureau cited EchoStar’s statement that “requiring an analog

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<sup>15</sup> *See id.* at 12539-40 ¶¶ 6-7.

<sup>16</sup> *See id.* at 12557 ¶ 55.

<sup>17</sup> *See id.* at 12558 ¶ 56.

<sup>18</sup> *E.g., EchoStar Technologies L.L.C.*, Memorandum Opinion and Order, 28 FCC Rcd 14000, 14003-04 ¶ 6 (MB 2013) (“*EchoStar Waiver Order*”); *TiVo, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 12181, 12185-86 ¶ 7 (MB 2013) (“*TiVo Waiver Order*”); *Dell Inc. and LG Electronics USA, Inc.*, Order, 25 FCC Rcd 9172, 9180 ¶ 16 (MB 2010).

<sup>19</sup> *TiVo Waiver Order*, 28 FCC Rcd at 12185-86 ¶ 7 (quoting TiVo Inc., Petition for Waiver, MB Docket No. 11-105, at 7 (filed Feb. 4, 2013)).

tuner would increase the retail price by \$20 to \$30 per device, the size of the devices by up to 33 percent, and the energy consumption of the devices by 2 watts, all without a marked benefit for consumers.”<sup>20</sup> The extent of these increases may depend on the particular model at issue, but the Bureau’s findings apply more broadly.

By requiring the inclusion of functionality that is no longer of use to the overwhelming majority of consumers, the analog tuner requirement places unnecessary constraints on product design and functionality, limiting the types of products that can be offered to consumers at low cost.<sup>21</sup> Every feature of a consumer electronics (“CE”) device has a combination of costs that is passed on to consumers – costs stemming from hardware, software, testing, patent licensing, or energy consumption, among other things. Each feature, including the analog tuner, is tested for both hardware and software operation. Removing the analog tuner from a device would simplify both and reduce manufacturing setup and testing, which in turn reduces product cost. With the removal of analog channel scanning steps and associated user interface items, the device would also become easier to use. Simple and fast channel scanning will be important during repacking of TV channels associated with the upcoming incentive auction.

The disadvantages of the analog tuner requirement are not outweighed by the benefit of mandatory analog signal reception in new devices.<sup>22</sup> At best, an analog tuner could offer only very minor benefits to a limited number of consumers, which would be far outweighed by the

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<sup>20</sup> *EchoStar Waiver Order*, 28 FCC Rcd 14004 ¶ 6 (citing EchoStar Technologies L.L.C., Petition for Waiver, MB Docket No. 13-177, at 3, 6 (filed June 21, 2013)).

<sup>21</sup> See *EchoStar Waiver Order*, 28 FCC Rcd at 14003-04 ¶ 6; *TiVo Waiver Order*, 28 FCC Rcd at 12185-86 ¶ 7. Fewer than 10 percent of American households rely exclusively on over-the-air broadcast service, so the vast majority of consumers do not use an NTSC broadcast receiver to access their local broadcast stations. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10496, 10500 ¶ 8 (2013) (“15<sup>th</sup> Video Competition Report”).

<sup>22</sup> *Notice*, 29 FCC Rcd at 12557 ¶ 55, 12558 ¶ 57.

costs imposed over a device's entire lifespan. Indeed, the Bureau has found that the benefits of the cost savings of manufacturing devices without analog functionality would outweigh any burden imposed on consumers, noting that consumers would have other options for receiving analog signals.<sup>23</sup>

**D. At Most, Repealing the Analog Tuner Requirement Would Have a *De Minimis* Effect on Consumers**

Eliminating the analog tuner requirement would have – at most – a *de minimis* effect on consumers, because those who wish to access analog signals over the air can continue to rely on existing devices for that purpose. Only a small number of consumers rely on over-the-air reception to view their local broadcast channels. Many of those consumers would be unaffected by the rule change, because the overwhelming majority of broadcast viewers currently view only digital broadcast signals.<sup>24</sup> For those consumers who wish to access over the air the small number of analog stations that may be available in their area, existing devices – including used or specialty devices, as well as any remaining new models – will continue to provide over-the-air analog reception capability.<sup>25</sup> Moreover, the first generation of digital-only devices offered pursuant to the rule change would probably come to market around the date that Class A stations cease analog operations, and at that time they would be capable of receiving signals from all full-power and Class A TV stations, and at least the vast majority of LPTV and TV translator stations.

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<sup>23</sup> *TiVo Waiver Order*, 28 FCC Rcd at 12185 n.31.

<sup>24</sup> *Id.* at 12186 ¶ 8.

<sup>25</sup> *Notice*, 29 FCC Rcd at 12558 ¶ 57.

### **III. THERE IS NO NEED TO IMPOSE LABELING OR EDUCATION REQUIREMENTS ON MANUFACTURERS**

The Commission should not impose consumer education and outreach requirements on broadcast receiver manufacturers and importers that market digital-only equipment prior to the LPTV and TV translator digital transition deadline.<sup>26</sup> Mandatory labeling and education requirements would not adequately account for the reasonable expectations of many consumers, because the vast majority of consumers do not rely on an over-the-air broadcast tuner to access broadcast stations.<sup>27</sup> Moreover, the overwhelming majority of broadcast viewers currently view only digital broadcast signals, so consumers who purchase the new, digital-only models are not likely to desire over-the-air analog functionality. In addition to imposing unnecessary compliance costs on manufacturers, a mandatory labeling requirement could cause an unwarranted stigma to attach to new, innovative services and devices, creating unnecessary confusion that is counterproductive.

While the content of a rule requiring that products not capable of receiving analog over-the-air broadcasting be so labeled seems relatively straightforward, the exact phrasing of the advisory and the rule's application to various products could be a matter of wasteful and unproductive debate. A one-size-fits-all labeling requirement would most likely not be appropriate for every single product given the large number of CE manufacturers and the wide array of features they incorporate in their product offerings. Also, as technologies and styles change, regulatory labels for digital-only equipment could quickly become outdated.

CEA strongly opposes the imposition of mandatory government labels based on speculation without evidence of existing problems. There is no demonstrated problem, nor is

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<sup>26</sup> *Id.* at 12558 ¶ 58.

<sup>27</sup> *See 15<sup>th</sup> Video Competition Report*, 28 FCC Rcd at 10592 ¶ 198.

one likely to arise. CE manufacturers have every incentive to ensure that consumers are well informed about the capabilities of the products they purchase. Misinformed consumers can easily lead to disappointed purchasers and product returns. To suggest that consumers and salespeople cannot communicate what the consumer wants, and that a federally dictated label will overcome this communication gap, does not comport with how the retail marketplace operates.<sup>28</sup> Absent a demonstrated need for a labeling requirement, the Commission should forgo such a rule.

#### IV. CONCLUSION

As stated above, the Commission should revise Section 15.117(b) of its rules to eliminate any possible interpretation that the rule obligates manufacturers to integrate analog tuners in TV receivers, and the Commission should refrain from imposing labeling and education requirements on manufacturers.

Respectfully submitted,

CONSUMER ELECTRONICS  
ASSOCIATION

By:           /s/ Julie M. Kearney          

Julie M. Kearney  
Vice President, Regulatory Affairs  
Alexander B. Reynolds  
Senior Manager & Regulatory Counsel  
Consumer Electronics Association  
1919 S. Eads Street  
Arlington, VA 22202  
(703) 907-7644

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<sup>28</sup> See, e.g., CEA Reply Comments, MB Docket Nos. 12-107 & 12-108, at 7-8 (filed Mar. 20, 2014).