

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	PP Docket No. 00-67
	)	

To: The Commission

**COMMENTS OF SINCLAIR BROADCAST GROUP INC.**

Sinclair Broadcast Group Inc. (“Sinclair”) hereby files these Comments in the above-captioned proceeding in which the Commission is seeking comment on a Memorandum of Understanding (“MOU”) between representatives of the cable industries and consumer electronics industries regarding a cable “plug and play” standard that will allow consumers to attach their digital television (“DTV”) receivers to cable systems without the need for a cable set-top box.<sup>1</sup> While the present proceeding focuses on the ability of television receivers to receive digital cable signals, Sinclair urges the Commission to ensure either through mandatory or voluntary performance standards that digital cable compatible sets implemented pursuant to the MOU also have the capability of providing quality reception of over-the-air DTV signals with a simple antenna. The vital public interest benefits of quality over-the-air DTV reception, even for sets designed primarily to operate with digital cable systems, are too important for the Commission to ignore.

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<sup>1</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996, Further Notice of Proposed Rulemaking*, CS Docket No. 97-80, PP Docket No. 00-67, FCC 03-3 (January 10, 2003) (“FNPRM”).

## Background

*Sinclair.* Sinclair is one of the largest over-the-air television broadcasters in America today. Sinclair currently owns and operates, programs, or provides sales services to 62 television stations in 39 markets. Sinclair's television stations reach approximately 24% of U.S. television households and include affiliates of the ABC, CBS, Fox, WB, and UPN networks. Sinclair has invested heavily in the DTV transition, spending millions of dollars to ensure that its stations meet Commission-mandated deadlines for building out DTV facilities.

*Cable "Plug and Play" FNPRM.* In the above-captioned proceeding, the Commission seeks comment on a MOU between various cable companies and consumer electronics manufacturers that details a cable compatibility standard for an integrated, unidirectional digital cable television receiver. According to the MOU, all unidirectional digital cable television receivers manufactured pursuant to the MOU will be capable of receiving analog basic, digital basic, and digital premium cable programming by direct connection of the receiver to a cable system providing digital programming, without the need for a cable set-top box. *FNPRM* at ¶ 2. The Commission notes that a set-top box will still be needed to receive advanced features such as cable operator-enhanced electronic programming guides ("EPGs"), impulse pay per view ("IPPV"), or video on demand ("VOD"). *Id.* at ¶ 3.

One aspect of the MOU contemplates a labeling regime for unidirectional digital cable television receivers. Specifically, the MOU calls for the Commission to adopt a rule which prohibits unidirectional digital cable receivers from being labeled or marketed as "digital cable compatible" (or some other term to be decided at a later date) unless they meet certain criteria specified in the Commission's rules.<sup>2</sup> In addition, the MOU calls for the Commission to adopt a

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<sup>2</sup> See *FNPRM* at Appendix B, Recommended Regulations at pages 2-4.

rule that requires manufacturers to self-certify their products under a test suite to be developed jointly by manufacturers and cable operators.<sup>3</sup> Finally, the MOU calls for the Commission to adopt a rule that requires manufacturers to include certain language in post-sale material that describes the capabilities and limitations of the unidirectional digital cable television receiver.<sup>4</sup>

### **Discussion**

#### **I. THE COMMISSION SHOULD ENSURE THAT DIGITAL CABLE COMPATIBLE SETS IMPLEMENTED PURSUANT TO THE MOU ARE ALSO CAPABLE OF PROVIDING QUALITY RECEPTION OF OVER-THE-AIR DTV SIGNALS WITH A SIMPLE ANTENNA**

While the present proceeding focuses on the ability of television sets to receive digital cable signals, Sinclair urges the Commission to ensure that digital cable compatible sets implemented pursuant to the MOU also have the capability of providing quality reception of over-the-air DTV signals with a simple antenna. The digital cable compatible sets proposed under the MOU include all of the necessary elements for a fully functioning digital television set, with the one glaring exception of any over-the-air DTV reception capability. Consumers purchasing television sets today, however, expect television sets to be capable of providing reception of both cable and over-the-air television signals. When cable systems suffer one of their frequent outages, consumers have come to rely on the ability to still receive over-the-air television reception with a simple antenna. These expectations will not change simply because cable operators and broadcasters have converted to digital technology. More importantly, the ability to receive over-the-air DTV signals serves many public safety objectives. When cable systems experience outages, over-the-air broadcasting is the only source of vital news and information, including emergency broadcasts. Thus, the ease of reception of over-the-air

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<sup>3</sup> See *id.* at pages 4-6.

<sup>4</sup> See *id.* at page 6.

television is crucial in times of emergency even for those consumers who rely on cable, especially given the unreliability of many cable systems. In light of the vital public interest benefits of over-the-air television, the Commission cannot ignore the need for quality over-the-air DTV reception, even for those sets consumers purchase primarily to operate with digital cable systems.

Unfortunately, Sinclair's experience has been that sets with over-the-air DTV tuners on the market today are not capable of providing quality reception of over-the-air signals. In their joint letter accompanying submission of the "plug and play" MOU to the Commission, representatives of the cable and consumer electronics industries noted that they shared Chairman Powell's "belief that voluntary inter-industry commercial agreements are generally preferable to government regulation."<sup>5</sup> While the cable "plug and play" agreement demonstrates that consumer electronics manufacturers will voluntarily agree to certain performance criteria with certain service providers (*i.e.*, the cable industry) if they are economically motivated to do so, the economic incentive for consumer electronics manufacturers to produce receivers capable of providing quality over-the-air DTV reception simply does not exist at the present time. For example, in opposing the Commission's recent decision to merely require new television receivers to include over-the-air DTV tuners without any mandated performance specifications,<sup>6</sup> the consumer electronics industry unequivocally expressed its view that, with the emergence of cable and satellite, over-the-air television is not a worthwhile market.<sup>7</sup> Indeed, the inability of

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<sup>5</sup> See Letter from Carl E. Vogel, et al, to Chairman Michael K. Powell, FCC (December 19, 2002).

<sup>6</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*, MM Docket No. 00-39 (August 9, 2002) ("*DTV Tuner Mandate Order*").

<sup>7</sup> See Daisy Whitney, *FCC Orders Digital Tuners in TVs by '07*, Electronic Media (Aug. 12, 2002) at 1A (quoting CEA spokesperson Jenny Miller as stating that "Most consumers don't

current receivers to provide ease of reception of over-the-air DTV with a simple antenna demonstrates the consumer electronics industry's lack of interest in facilitating over-the-air DTV reception. Sadly, the consumer electronics industry has not recognized the vital public interest benefits of over-the-air television. Given the position of equipment manufacturers that a DTV tuner for reception of over-the-air signals is worthless, it is unlikely that electronics manufacturers and broadcasters, unlike electronics manufacturers and the cable industry, will ever voluntarily agree to a set of minimum performance criteria for over-the-air DTV reception.

For these reasons, Commission action, rather than a voluntary inter-industry agreement, will most likely be needed to facilitate over-the-air DTV reception. Sinclair believes there are two approaches the Commission can take to ensure that manufacturers produce receivers capable of reception of over-the-air DTV signals commensurate with consumer expectations: mandatory performance standards<sup>8</sup> or voluntary performance standards accompanied by a meaningful labeling regime. While Sinclair is encouraged by the Commission's recent *Notice of Inquiry*

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need [a DTV tuner] because they get signals through cable"); Greg Gatlin, *Feds Mandate Digital TV Tuner*, The Boston Herald (Aug. 9, 2002) at 27 (quoting CEA President Gary Shapiro as stating "With fewer than 13 percent of American households relying on over-the-air reception of their TV signal, we don't need a digital broadcast tuner embedded in every new television in order to accelerate the DTV transition"); *FCC Orders Set Manufacturers to Include DTV Tuner*, Communications Daily (Aug. 9, 2002) (CEA President Gary Shapiro "said the decision was wrong because 90% of Americans didn't need tuners because they received their broadcast signals through cable or satellite"); Eric A. Taub, *The Big Picture on Digital TV: It's Still Fuzzy*, The New York Times (Sept. 12, 2002) at sec. G, p. 1 (quoting CEA President Gary Shapiro as stating that "When the digital television transition started, we thought it would be driven by broadcasters. What were we thinking? Cable and satellite is where the action is.").

<sup>8</sup> Sinclair has urged the Commission, pursuant to its implementation of the All Channel Receiver Act in the *DTV Tuner Order*, to clarify the meaning of "adequate" DTV reception by adopting requirements for a DTV receiver noise figure, dynamic range and sensitivity level, receiver selectivity level, and multipath tolerance. See *Sinclair Broadcast Group Inc., Petition for Partial Reconsideration*, MM Docket No. 00-39 (filed November 8, 2002).

exploring implementation of voluntary over-the-air DTV receiver performance standards,<sup>9</sup> Sinclair believes that mandatory performance standards are preferable for reception of over-the-air DTV given that those entities who control the production of receivers have demonstrated little interest in the over-the-air market. While consumer electronics manufacturers may perceive the over-the-air market as too small compared to cable to devote resources to developing quality over-the-air reception, Chairman Powell has recognized that tens of millions of Americans still rely on over-the-air reception.<sup>10</sup> Absent mandated standards, it is likely those Americans who rely on over-the-air reception will be disenfranchised as manufacturers continue to produce nothing but the least costly and therefore poorly performing over-the-air DTV receivers. And, as stated above, without performance standards, consumers purchasing digital cable compatible sets will be disappointed to find that their sets do not also have the ability to receive over-the-air DTV signals.

Voluntary over-the-air DTV performance standards, however, may be acceptable if they are accompanied by a meaningful labeling regime with rigorous monitoring by the Commission as to whether manufacturers are meeting these voluntary standards. Sinclair notes that the MOU's proposal for a labeling regime may serve as useful precedent for over-the-air DTV

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<sup>9</sup> See *Interference Immunity Performance Specifications for Radio Receivers, Notice of Inquiry*, ET Docket No. 03-65, MM Docket No. 00-39, FCC 03-54 (March 24, 2003) (“*Receiver Standards NOI*”).

<sup>10</sup> Chairman Powell explained in his Separate Statement on the *DTV Tuner Mandate Order*: “There are approximately 81 million television sets in the U.S. (over 30% of the total) that are not connected to any subscription video service and rely solely on free, over-the-air broadcasting. Of those sets that rely on over-the-air service, about 46.5 million are in broadcast-only homes and 34.5 million are in homes that subscribe to a multichannel video programming service. Thus, over-the-air tuners affect tens of millions of consumers.”

reception. The MOU contemplates that the Commission will adopt a rule that permits a unidirectional digital cable television receiver to be labeled and marketed as “digital cable compatible” only if the receiver satisfies certain criteria. In its *Receiver Standards NOI*, the Commission is contemplating a similar regime for receivers with respect to over-the-air DTV reception. *Receiver Standard NOI* at ¶ 36. Under such a regime, a DTV receiver would be labeled to indicate whether or not it complies with the Commission’s voluntary minimum receiver performance standards for over-the-air DTV. With such a requirement, consumers will at least be aware prior to purchasing a DTV receiver whether the receiver is capable of providing quality over-the-air reception. Having agreed to a labeling regime in the MOU regarding digital cable compatibility, consumer electronics manufacturers should have no objection to a similar labeling regime for over-the-air DTV reception.

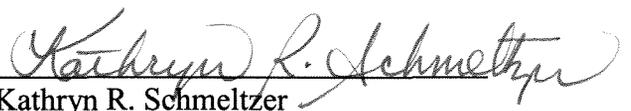
Regardless of whether the Commission adopts mandatory performance standards or voluntary performance standards for over-the-air DTV reception, Sinclair believes it is critical that such a decision coincide with the Commission’s implementation of the cable “plug and play” agreement. Adoption of such standards will ensure that consumers purchasing sets for digital cable reception will still have the ability to receive quality over-the-air DTV reception.

### **Conclusion**

For the reasons discussed above, Sinclair urges the Commission to ensure that digital cable compatible sets implemented pursuant to the MOU also have the capability of providing quality reception of over-the-air DTV signals with a simple antenna.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Shaw Pittman LLP, hereby certify that on this 28th day of March 2003, served a true copy of the foregoing "COMMENTS" by hand delivery upon the following:

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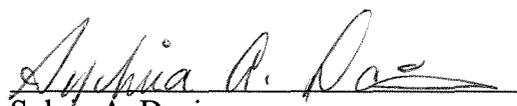
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