

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Milan
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.

Robert S. Schwartz
Attorney at Law
rschwartz@mwe.com
202.756.8081

May 10, 2005

VIA ECFS

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Communications in ET Docket 05-24.

Dear Ms. Dortch:

On May 9, 2005, Kevin O'Connor, Vice President and Divisional Manager, Home Entertainment, and Kimberly Woodard, Director, Federal Government Relations, Wal-Mart Stores, Inc.; Peter Fannon, Vice President, Technology Policy & Regulatory Affairs, Panasonic Corp. of North America; Julie Kearney, Senior Director and Regulatory Counsel, Consumer Electronics Association ("CEA"); and the undersigned, on behalf of the Consumer Electronics Retailers Coalition ("CERC"), met with Catherine Bohigian, Legal Advisor to Chairman Martin; and, except for Ms. Kearney, had a separate meeting with Bruce Franca of the Office of Engineering and Technology and Eloise Gore of the Media Bureau.

Our meetings pertained to the Commission's Notice of Proposed Rulemaking ("NPRM") regarding requirements for digital television receiving capability and the petition of CEA and CERC to modify the schedule for phasing in digital tuners to mid-size television sets. In reviewing the comments and the reply comments received and the current state of the record, we urged the Commission to adopt the proposals on which the Commission invited specific discussion in the NPRM: (1) to advance the effective date of regulation governing television receivers of 25 inches to 36 inches from July 1, 2006 to March 1, 2006; and (2) to dispense with the counterproductive "50 percent" regulation, applicable to the same size category, that would otherwise take effect on July 1, 2005.

On behalf of CEA, CERC, and their members, we reviewed the points made in the CEA and CERC reply comments, specifically that the proposed changes to the mid-size television regulations would result in the optimal balance between the Commission's regulations and real-world product supply and consumer demand; would accelerate rather than retard the DTV transition; and would result in the least number of consumers losing affordable access to products and services on which they rely.

Consumer Electronics Retailers Coalition



www.ceretailers.org

The CERC participants also left behind a summary of positions relating both to the 2005 and 2006 “tuner issue” dates that were noticed for comment in the NPRM, and to public policy and “tuner” issues that were not noticed for comment in the NPRM, but have been raised in other contexts. This summary is attached as an Appendix.

This letter is being provided to your office in accordance with Section 1.1206 of the Federal Communications Commission rules. A copy of this letter has been delivered to the parties listed below.

Very truly yours,

Robert S. Schwartz

Robert S. Schwartz

cc: Catherine Bohigian
Bruce Franca
Eloise Gore

(CERC Appendix beings next page)



WHY 'PAPER SOLUTIONS' TO THE FCC'S "DUAL TUNER" MANDATE WOULD IMPOSE COSTS ON CONSUMERS BUT NOT HELP THE TRANSITION

The Consumer Electronics Retailers Coalition and its members – Best Buy, Circuit City, RadioShack, Target, Tweeter, Wal-Mart, and the three major retail associations – support a “hard” date for the cessation of analog TV broadcasts, and, once the date has been set, a consumer advisory label on analog-tuner products. They have also proposed, jointly with the Consumer Electronics Association, a way to *move up* a key date in the FCC’s “Dual Tuner” mandate. *The proposed changes have been published for comment by the FCC as a “Notice of Proposed Rulemaking.” They need to be acted on expeditiously if manufacturers are to comply.*

Some have suggested that the noticed changes should *not* be made, and that some effective dates should be moved up *further*, so as, on paper, to conform to an early transition date. CERC cautions that failing to implement the Notice, and arbitrarily moving up other established “Tuner Mandate” dates, would *not* advance the DTV transition or lower its costs to consumers. It would have the opposite effect: Such measures would impose *unnecessary costs and inconveniences on the U.S. consumers who are least prepared to bear or afford them.*

What CERC And CEA Proposed

The FCC’s “Dual Tuner” regulation requires TV receivers having analog (“NTSC”) TV-broadcast tuners, on a basis phased in according to screen size, also to have “digital” (“ATSC”) TV-broadcast tuners. In response to CERC and CEA’s initiative, the FCC issued a Notice of Proposed Rulemaking in Docket No. 05-24, to move the effective date of this regulation for 100 percent of all midsize (25” – 35”) TV receivers *up*, from July 1, 2006, to March 1, 2006. The FCC also proposed eliminating its “50 percent of units” rule, that would take effect on July 1, 2005. CEA and CERC have demonstrated conclusively that this “50 percent rule,” applied to large screen receivers in the past year, has been not only inefficient and difficult to enforce; it is *counterproductive* to the DTV Transition.

Why CERC Opposes Mandated “Paper Solutions”

Some have suggested that, if an early “hard date” is to be set (*e.g.*, January 1, 2007), then the FCC should not implement the noticed changes, *and* that various dates, including those not implicated in the Notice, should *also* be moved up. CERC and its members caution that such a “paper” accommodation would likely *impede rather than advance the DTV transition.* It would fail to add any DTV tuners and might drive *all* tuners out of some products. It would also palpably *harm the most vulnerable consumers.* Here are CERC’s concerns about each date:

- **July 1, 2005 – July 1, 2006 “50 percent rule.”** This rule has been clearly demonstrated to be counterproductive. It compels retailers to compete to lock in early supplies of the rationed “single-tuner” product, and to expect that prices of “dual tuner” models will be driven down later in the 12-month period. It thus *front-loads* single tuner sets to the July – December period, and channels the demand for dual tuner products to the *latter months of the twelve month period.* Hence it does *nothing* to encourage “Christmas” sales of sets with DTV tuners. Instead, it *discourages the ordering of such products prior to Christmas.* The DTV Transition will be advanced by the *deletion* of this rule.

Consumer Electronics Retailers Coalition



www.ceretailers.org

- **July 1, 2006 100 percent requirement, 25" – 35" TVs.** CERC and CEA proposed moving this date *up by 4 months*, from July to March. Some, concerned over "missing" the Christmas season or the Super Bowl, have proposed the "paper solution" of moving the date up further, to January or even to July 2005. But as CERC's and other Reply Comments demonstrated:
 - A March 1 cutoff will have much earlier effects. Manufacturers cannot risk being caught with inventory that they cannot sell in the United States after this date. Therefore, *if* the perverse 50 percent rule is eliminated, moving the July 100 percent date up to March should have a *very positive influence on the product mix in the holiday and "bowl" seasons*.
 - It is simply *too late* to try to force TV receiver manufacturers to implement a 100 percent rule at an earlier date. As most consumers do not need broadcast TV tuners in some or all of their viewing locations, the result would likely be sales of midsize sets with *no tuners at all*.
- **July 1, 2007 100 percent requirement for 13" etc. TVs, VCRs, etc.** Although the FCC said in its Notice that it did *not* contemplate moving this final "phase-in" date, some have suggested that this final date, for 13" TVs and *any* other product with an analog tuner, should be move up too. This ignores the realities of *both supply and demand*.
 - **Supply.** One cannot simply harvest the *bottom of the production curve* without going through the middle. The fact that a product can be supplied at time "X" in quantity "Y" at cost "Z" does *not* mean that it also can be supplied *at the same time* in twice the quantity at half the cost.
 - **Demand.** Consumers in this product category *cannot afford* to buy these products at the prices at which they might be offered. Based on real world experience, one CERC member projects that, at least through January, 2006, the cost to a consumer of adding a digital tuner to any product with an analog tuner would be **\$100**. Assume that by January, 2007, this cost can be trimmed to **\$75**. The impact on the covered product categories would be as follows:
 - VCR, *from \$49 to \$124*.
 - 13" TV, *from \$79 to \$154*.
 - 20" TV, *from \$99 to \$174*.
 - DVD player / VHS recorder, *from \$99 to \$174*

The consequences are potentially disastrous. Many purchasers of products in these categories live from paycheck to paycheck and could not afford such price increases. In the estimation of one CERC member, anything more than an increase of **\$10 - \$15** would *kill* these product categories.

Even if these products survived *without any tuners at all*, lower and middle income consumers who are "basic cable" customers would still suffer: They could no longer plug their cable directly into a 13" TV or a VCR so as to tune "basic" and "enhanced basic" cable tiers without a set-top box. With no analog broadcast tuner, the set would not tune *any* cable channels. In order to continue to get the *same service*, millions of these consumers would have to *lease a set-top box* for several dollars a month. (And, unless they do this, they can *not* be counted as receiving digital broadcasts via cable system transmission.)

Consumer Electronics Retailers Coalition



www.ceretailers.org

CERC and its members are committed to educating consumers about the DTV Transition, *and* to providing them with products that best serve their needs, at prices they can afford.

For further information please contact CERC counsel Bob Schwartz, RSchwartz@MWE.com, at 202 756-8081 or Executive Director Marc Pearl, Pearl@ceretailers.org, at 202 585-0268. For more about CERC, visit www.ceretailers.org. CERC members are working with the FCC on DTV public education. See http://www.ceretailers.org/pdf/DTV_Tip_Sheet.pdf.