

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

In the Matter of)	
)	
)	
Requirements for Digital Television)	ET Docket No. 05-24
Receiving Capability)	
)	

**REPLY COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION AND
CONSUMER ELECTRONICS RETAILERS COALITION**

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TABLE OF CONTENTS

I. THE ONLY RELEVANT FACTUAL QUESTION AS TO RECEIVERS 13 INCHES AND ABOVE REMAINS: CAN THE GENERAL POPULATION OF MANUFACTURERS REASONABLY BE EXPECTED TO PROVIDE PRODUCT ON AN ACCELERATED SCHEDULE?..... 3

II. COMMENTERS’ OBSERVATIONS REGARDING REDUCTION IN COMPONENT PRICES ARE BASED ON ASSUMPTIONS THAT ARE KNOWN TO BE FALSE..... 5

III. OTHER COMMENTERS’ REQUESTS FOR AN ACCELERATION OF DATES ARE BASED ON DESIRE RATHER THAN FACT 8

IV. NO BASIS HAS BEEN ESTABLISHED FOR THE COMMISSION TO SET ANY MANDATE DATE FOR TV RECEIVERS SMALLER THAN 13 INCHES IN SCREEN SIZE 11

V. CONCLUSION..... 12

SUMMARY

In this proceeding, the Commission asks whether there is evidence that would justify accelerating its mandate, established three years ago, for TV receivers with screen sizes of 13 to 24 inches to include digital TV tuners by July 1, 2007, to some date “no later than December 31, 2006.” CEA and CERC see no evidence to support such a change within the parameters set by the Commission in 2002 and repeated in its June 2005 *Report & Order*.

CEA and CERC’s position is supported by the comments of manufacturers Philips and SHARP, who provide specific documentation for the factual arguments of CEA and CERC as to why it would be infeasible to require, now, a modification of manufacturers’ production, financial, and personnel resource cycles to incorporate DTV tuners in all TV receivers 13 inches and above any earlier than March 1, 2007.

It is evident from the comments received that proponents of an acceleration base their assumptions regarding price declines on an ostensible, effectively abandoned “soft” analog shutoff date that everyone agrees will not be met, and that the Commission has ample reason to *know* cannot reflect reality. Further, those commenters who urge the Commission to accelerate the dates that it established in 2002 do not even address or purport to support the chain of assumptions that the Commission posed as justifying such a change.

With respect to new receivers with screen sizes less than 13 inches, CEA and CERC believe that experience is necessary with the small chassis products that currently are subject to the Commission’s tuner requirements before the feasibility can be determined regarding the inclusion of digital tuners in some of these radically smaller and less expensive products. At present, the changes in technology and products since 2002 would argue against, rather than in favor of, a new mandate.

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The Consumer Electronics Association (“CEA”) and the Consumer Electronics Retailers Coalition (“CERC”) respectfully file these Reply Comments in the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding.¹

In their joint Comments, CEA and CERC reviewed the ultimate acceptance of and reliance on the DTV Tuner phase-in schedule that the Commission mandated in August, 2002.² We pointed out that this schedule was set by the Commission based on its own determinations with respect to manufacturing and product cycles and sequences, and on the existing provisions of law with respect to a shutoff of analog signals, which the law leaves up

¹ *In the Matter of Requirements for Digital Television Receiving Capability*, Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 05-24, FCC 05-121 (rel. June 9, 2005) (“R&O and FNPRM”).

² 47 C.F.R. § 15.117(i) (2003); *See Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978 (2002) (“Digital Tuner Order”).

to determinations to be made by the Commission. We pointed out that any change in this schedule – which an appellate court in 2003 had determined to be based on due consideration of facts – would have to be based on some change in the underlying facts or law, and that the possible assumptions cited by the Commission as signifying such a change in fact pointed in the other direction.³

The Commission has now received Comments from manufacturers Philips⁴ and SHARP⁵ that provide very specific support for the factual arguments of CEA and CERC as to why it is simply too late to modify product, production, financial, and personnel resource cycles to incorporate DTV tuners in all TV receivers 13 inches and above any earlier than March 1, 2007. These specific facts are uncontradicted in the record, and are not addressed by any other commenters in this proceeding.

CEA and CERC also pointed out that if it *were* possible for the “general population of manufacturers” to revise their allocations of resources to meet the truncated schedule, there would be little incentive to do so because the additional costs would move these products into price ranges that customers would be unwilling or unable to pay. These observations are contradicted in the record only by *predictions* of price reductions, based on an early demand for analog-to-digital converter products, pegged to an early analog shutoff date (under present law) that the commenters and the Commission know, for a fact, will not occur. The Commission should not make findings based on factual assumptions that it *knows* to be false.

Finally, some commenters ask the Commission to move the dates up *anyway*, based on fiscal assumptions about minimizing any government-sponsored consumer subsidy that

³ *Id.* at para. 22.

⁴ See Comments of Philips Electronics of North America Corporation (filed July 27, 2005) (“Philips Comments”).

⁵ See Comments of Sharp Electronics Corporation (filed July 27, 2005) (“SHARP” Comments).

the Congress might enact. To the extent such matters are within the Commission's purview, the Commission also would need to consider the fairness and appropriateness of making a quasi-legislative determination to impose additional costs, beyond those previously mandated -- and amounting to a hidden tax -- on manufacturers and consumers now, in anticipation of purely fiscal considerations pertaining to an action that the Congress *might* take later.

I. THE ONLY RELEVANT FACTUAL QUESTION AS TO RECEIVERS 13 INCHES AND ABOVE REMAINS: CAN THE GENERAL POPULATION OF MANUFACTURERS REASONABLY BE EXPECTED TO PROVIDE PRODUCT ON AN ACCELERATED SCHEDULE?

CEA and CERC emphasized in their joint Comments that they *rely on*, rather than challenge, the original rationale, and the particular prescription, chosen by the FCC to implement its Tuner Mandate.⁶ In requesting comments in the FNPRM portion of its Report & Order, the Commission gave no indication that it would consider departing from the metric stated earlier in the same document:

“It makes little sense to require products to be on the market *before the general population of manufacturers can deliver them*. As many commenting parties observe, if manufacturers were not able to meet our deadline, they might cease production of mid-range sets or switch to monitor products that do not include TV tuners. Such a result would be disruptive to our goal of ensuring that consumers are able to receive DTV signals and could serve to delay the DTV transition.”⁷

The Commission aired a scenario according to which it might find that this adverse result would not occur: (1) that the volumes already achieved would lead to economies of scale in smaller sizes; (2) that the demand for converter boxes attendant to a statutory analog shutoff date would produce inexpensive chips; and (3) that a market for inexpensive

⁶ See Comments of the Consumer Electronics Association (“CEA”) and Consumer Electronics Retailers Coalition (“CERC”), at 4 (filed July 27, 2005) (“CEA and CERC Comments”).

⁷ R&O and FNPRM, at para. 20 (*emphasis added*).

converter boxes would, by December 31, 2006 or earlier, lead to lower costs for integrating tuners in TV receivers.

CEA and CERC demonstrated that these assumptions could not support a determination to accelerate the mandated dates. First, we pointed out that “[w]hile it may seem that success in one area can support acceleration in another, this is not the case when *planning and resources have been devoted to the areas that the mandate required to be addressed first*, are still being devoted to those areas. These personnel and physical resources cannot now be readily shifted or duplicated to respond to a change in plan – particularly when it is unlikely that the costs involved could ever be recovered.”⁸

Second, we noted that even the price increases projected by Zoran⁹ and cited by the Commission led directly to the conclusions that: (a) if it were possible to include DTV tuners in *all* category products by the earlier date, the likely effect on prices would be so significant as to reduce demand sharply; and (b) in light of the reduced demand there would seem little incentive to produce such products at all – contravening the Commission’s own metric.¹⁰

CEA and CERC see nothing in the record that contradicts the Commission’s observation in the original Digital Tuner Order that: “...we understand that including DTV tuners in new TV sets may affect set prices, and that initially it will not be economically practical to include DTV tuners in sets with smaller screens.”¹¹ This observation has now received additional support in the record. Philips observes:

Philips’ design and manufacturing plans are based on the phased succession of DTV tuner mandate deadlines that the Commission established three years ago, concluding with the mid-2007 deadline for 13” – 24” screen sizes and peripheral television products. It is simply

⁸ CEA and CERC Comments, at 4-5.

⁹ See R&O and FNPRM, at para. 21.

¹⁰ See CEA and CERC Comments, at 6-9.

¹¹ Digital Tuner Order, at para. 38.

not feasible at this late date to revamp dramatically these plans yet again. Nor is it practical to change the July 1, 2007 deadline for peripheral equipment such as tuner-equipped VCRs, DVD players, and set-top boxes.¹²

SHARP further documents this point:

Furthermore, an advance to January 1, 2007 would require volume manufacturing for all affected models to commence no later than November 2006 – a mere 15 months from today. However, production scheduling and operational considerations would require that the start of production of these devices be staggered – some products would need to begin production in September 2006, just 13 months from today. These issues would preclude development of new products lines that are appropriate for this market (price-sensitive smaller televisions), yielding inappropriate products in the marketplace.

Advancing the tuner mandate compliance date in a misguided attempt to meet the holiday selling season would have the opposite effect – it would disrupt the 2006 holiday selling season (for all television devices), and have no affect the 2007 holiday season. This would result in significant consumer confusion and anger, and likely fewer digital tuners in consumers' homes.¹³

II. COMMENTERS' OBSERVATIONS REGARDING REDUCTION IN COMPONENT PRICES ARE BASED ON ASSUMPTIONS THAT ARE KNOWN TO BE FALSE

Motorola's urging that the Commission set an advanced date is based entirely on a false assumption – the “soft” analog shutoff date of December 31, 2006, that even its own witness, at a recent Congressional hearing, stated has no chance of occurring in the real world – an observation that the Commission has ample reason to know is correct. Motorola, though itself a manufacturer, premises its argument not on the production factors cited by the Commission, but on an assumption pertaining to this ostensible “statutory requirement” that it now knows is not based in fact. Yet in its comments, Motorola argues that a date “no later than December 31, 2006 ...

¹² Philips Comments, at 2; *see also* 3 – 8.

¹³ SHARP Comments at 2-3.

... would better align with the December 31, 2006 statutory requirement for the anticipated return of analog spectrum than the current DTV tuner requirement of July 1, 2007*** Having manufacturers continue to sell analog receiver equipped sets of any size after the analog handover is unconscionable. Motorola, therefore supports moving the date to no later than December 31, 2006.¹⁴

In testimony to the Senate Commerce Committee only two weeks before these Comments were filed, however, Mr. Mike Kennedy, on behalf of Motorola, urged Congressional action *because* Motorola is aware that under existing law no actual analog shutoff is in the offing at any time close to December 31, 2006, and asked the Congress to address this situation:

Current law sets December 31, 2006 as the date for clearing television from the band. However, this is not a firm date. Broadcasters do not have to clear the band until 85% of the households in their service areas have the capability to receive digital TV signals, an environment unlikely to be met by yearend 2006.

Under current law, while TV incumbents are required to vacate this spectrum at the end of 2006, they can receive an unlimited extension of this deadline based on the state of the transition in their particular market. *So, in reality, there is no “hard date” when the transition will end and the spectrum will really be accessible to public safety and wireless broadband service providers everywhere.*¹⁵

Component supplier ATI makes representations to the Commission that, while much more specific and relevant than Motorola's, *also* are clearly dependent on an assumption known to be unrealistic. Each of ATI's predictions is stipulated to depend on the 2006 “soft date” for ending analog broadcasting rather than on an actual “hard date”:

¹⁴ Comments of Motorola, Inc., at 2-3 (filed July 27, 2005).

¹⁵ Hearings, U.S. Senate, Committee on Commerce, Science Transportation, Digital Television Transition -- Hearing II, July 12, 2005, prepared statement of Mr. Mike Kennedy, Senior Vice President, Motorola, at 6-7. Available at <http://www.commerce.senate.gov/pdf/kennedy.pdf>. (Bolded emphasis added; underlined emphasis in original.) Moreover, in its capacity as a manufacturer Motorola has been more than sensitive to both “necessary lead times” (*See ex parte* letters of Christine G. Crafton, Docket No. 97-80, March 24, 2003) and integration costs (*ex parte* letter of Jonathan Friedman, Docket No. 97-80, November 4, 2004).

ATI believes that the retail price of DTV set-top converter boxes would fall to about fifty US dollars by the fall of 2006, *if substantial demand for such devices materializes through steps taken by the Commission or other means.*¹⁶

Based on *this hypothetical projection of demand*, ATI then goes on to extrapolate cost decreases in the production of TV receivers themselves:

Specifically, based on historical price reductions and *anticipated manufacturing volumes*, ATI projects that the manufacturing cost of adding DTV functionality to a television receiver will be less than forty U.S. dollars by the fall of 2006.¹⁷

So, ATI itself stipulates that its cost figures are based on time and volume projections that depend on a “transition date” that has lost real-world relevance. It is only on such a basis that ATI can project such an early decrease in integration costs.¹⁸ Moreover, ATI also very appropriately cautions that its projection does not provide the whole story as to whether an acceleration of dates is *actually feasible* or whether the ATI figures cover all of the costs that would be involved. ATI also cautions that its projections depend on the assumption that December 31, 2006, rather than being an effectively irrelevant soft date, is a “firm deadline”:

The ability of DTV chip manufacturers like ATI to provide components for DTV STBs and for adding DTV functionality to analog television receivers addresses only a portion of the issues that the Commission must analyze in considering an earlier DTV tuner deadline. The Commission also must consider additional issues such as *the time and costs involved in the redesign of existing engineering plans and manufacturing processes*, as well as the *logistical, distribution, and marketing* hurdles that an earlier deadline would create. *Once the Commission establishes a firm deadline*, ATI believes that all affected industries will address these issues in the most appropriate manner to ensure full compliance with the Commission’s mandate.¹⁹

¹⁶ Comments of ATI Technologies, Inc., at 3 (filed July 27, 2005)(*emphasis added*).

¹⁷ *Id.* (*emphasis added*).

¹⁸ Moreover, ATI, like other commenters, seems to assume that *its own* chips will capture much or all of whatever volume there actually is, rather than smaller volumes being spread over a number of suppliers.

¹⁹ *Id.* at 4 (*emphasis added*).

CEA and CERC do foresee that the projections made by ATI and others will *ultimately* be borne out in the marketplace, once: (1) a “hard date” is set; (2) the “hard date” of the analog cutoff actually approaches; and (3) sufficient time has passed for “the redesign of existing engineering plans and manufacturing processes.” The issue in this proceeding, however, is whether there is any evidence that an acceleration of the July 1, 2007, date to a date any earlier than March 1, 2007, would be justified. CEA and CERC urge that there remains no evidence of such justification within the parameters set by the Commission in 2002 and repeated in its June, 2005 *Report & Order*.

III. OTHER COMMENTERS’ REQUESTS FOR AN ACCELERATION OF DATES ARE BASED ON DESIRE RATHER THAN FACT

Others who urge the Commission to accelerate the dates that it established in 2002 do not even address or purport to support the chain of assumptions that the Commission posed as justifying such a change.

The Comments of Disney, MSTV/NAB, and APTS simply do not address the production cycle metrics on which the Commission requests comment. The closest Disney comes is in its unsupported observation that “[a]lthough the smaller sets are undoubtedly lower cost, it seems intuitive that these sets also will be unlikely to be connected to cable and instead will be placed in viewers’ kitchens, bathrooms, or will be used when viewers are traveling.”²⁰ In addition to being irrelevant as to the question before the Commission (whether it would be *feasible* to require an acceleration in the phase-in schedule), this perspective entirely ignores the existence of customers for Basic Cable services – perhaps half of all cable customers – who for at least the next decade are likely to rely on TVs with

²⁰ See Comments of The Walt Disney Company, at 4 (filed July 27, 2005).

analog tuners to receive the service to which they have subscribed.²¹ Disney gives no reason why inexpensive TVs are not and will not be hooked up directly to cable outlets rather than to antennas.²²

In a similar vein, MSTV/NAB argue that “[a]ccelerating the DTV tuner requirement for these smaller set sizes, which in turn reduces the number of analog-only sets sold to consumers, will reduce the number of sets that will need a subsidized digital-to-analog converter.”²³ First, this similarly assumes away the *most common and continuing* use of analog TV tuners: to tune basic and enhanced basic cable services – including broadcast channels – as received from cable operators. Indeed, the House Staff Draft of the DTV Transition legislation, in its provision for analog cable carriage of digital broadcasts, *relies* on this functionality of built-in analog tuners. Thus, even if this argument were relevant to the questions posed for comment by the Commission, it would simply be wrong to assume that every television sold with an analog tuner will in fact require an over-air converter box. Moreover, the Commission already has determined, as recently as this June, that it would be poor public policy to purposely make a category of sets prohibitively expensive (in the hopes of saving “subsidy” money that the Congress has not yet decided to allocate). The FCC’s policy decision was correct – it should be up to the Congress to decide to effectively tax a product off the market, in the hopes of avoiding some later expenditure that has not even been agreed upon.

²¹ The Comments of Chris Llana – arguing that converter boxes are inferior to integrated tuners for consumer purposes – also ignore the demographics of cable television, in which about half of the customers rely on built-in *analog* tuners and the other half rely on *converter boxes*. See Comments of Chris Llana (filed July 27, 2005).

²² Indeed, it seems likely that even in a household that subscribes to premium services, the larger and more expensive TVs would be served by cable boxes that deliver premium services, whereas the less expensive TVs would be hooked up directly to cable, whereby they can use built-in analog tuners to receive broadcast, basic, and “extended basic” services at *no additional cost*.

²³ See Joint Comments of The Association for Maximum Service Television, Inc. and The National Association of Broadcasters, at 5 (filed July 27, 2005)(“MSTV/NAB Comments”).

The only relevant MSTV/NAB contribution to the factual record is the observation “that many consumers are using smaller sets as their *primary* sets.”²⁴ This is consistent with information provided to the Commission by CERC and CEA that: (a) many consumers *rely* on low-price sets; (b) these consumers could not afford sets bearing the price increases projected according to any reasonable assumption, and (c) lower income consumers, therefore, would be harmed by an acceleration of the existing tuner mandate schedule.

APTS, in contrast to its broadcast brethren, stipulates that the tuner mandate schedule should be “reasonable,” and addresses itself to “additional measures [that] may be needed to ensure a smooth transition” APTS goes on to propose a constructive program for public education, *including* the sort of public service announcements that have been sorely and conspicuously lacking in the broadcast industry as a whole. CEA and CERC believe that this sort of activity, more than any mandated wrenching of product development and production, will be most beneficial to the DTV Transition overall.

CEA and CERC also note that in his July 12 appearance before the Senate Commerce Committee, Mr. Eddie Fritts of the NAB indicated that not only could NAB accept a **2009** date for the end of analog broadcasting, but also that it supports a new campaign to educate consumers about the analog cutoff. We urge NAB to follow through on its commitments.²⁵

²⁴ *Id.* at pp. 4-5.

²⁵ Further, as part of the broadcasters’ commitment to further the DTV Transition, it is critical that broadcasters comply with Commission’s maximization/replication requirements. As of today, more than 100 stations have requested a waiver and extension of the Commission’s July 1, 2005 requirement for maximization and replication for stations affiliated with a top-four network and located in the top-100 markets. Broadcaster compliance with these FCC rules is imperative to ensure a successful and rapid transition to digital television.

IV. NO BASIS HAS BEEN ESTABLISHED FOR THE COMMISSION TO SET ANY MANDATE DATE FOR TV RECEIVERS SMALLER THAN 13 INCHES IN SCREEN SIZE.

On the subject of extending the tuner mandate requirements to receivers smaller than 13 inches in screen size, CEA and CERC observed that this is a new issue, as to which there is insufficient information in the record as to feasibility. The Comments received thus far do not yet provide a basis for a reasoned determination of this question.

Philips would find an ultimate extension of the mandate for non-subscriber broadcast products to be “reasonable,” but does not indicate what time frame would be appropriate. Other commenters base an argument for inclusion on the particular nature (*e.g.*, battery-powered) and uses of small-screen devices. SHARP, however, reaches an opposite conclusion based on the same premise:

Sub-13-inch televisions are generally either mobile (and destined for automotive DVD players) or very inexpensive, or both. *** [D]evices intended for hand-held and portable reception of broadcast television signals are typically rather inexpensive – and consumers are better served by repurchasing the portable device after the analog cutoff (after most of the efficiency of scale cost decreases) than being forced to purchase a digital tuner earlier. Furthermore, mobile devices have unique tuner needs better served by more advanced silicon – consumers will get a better mobile digital tuner, at a less expensive price (even taking into account the repurchase), without a tuner mandate.²⁶

Nothing, in any of the Comments received, would appear to support a requirement for inclusion of DTV tuners in small-screen devices by the July 1, 2007 date that has governed other devices since August of 2002. The SHARP comments suggest that, if the mandate were to be extended to these products, only some later date should be considered to be feasible. At present, there is no basis for determining what that date should be.

²⁶ SHARP Comments, at 3.

As CEA and CERC discussed in our comments, the changes in technology and products since 2002 also argue against, rather than in favor of, a new mandate. In 2002, the Commission considered the universe of relevant devices to include only televisions, DVD players, and VCRs. Since that time, technology has made dramatic advances and this universe of television receiving devices extends to an array of mobile and wireless devices. The Commission must consider the impact of such a requirement on a myriad of industries and the concomitant increase in prices on such devices.²⁷

V. CONCLUSION

For the reasons expressed herein and in their joint Comments, CEA and CERC believe that there is insufficient basis for the Commission to depart, as proposed, from the existing July 1, 2007 date pertaining to TV receivers with screen sizes of 13 to 24 inches. This date has been relied upon in the product and resource planning of manufacturers and in the merchandising and marketing plans of retailers. A change in this date to a date any earlier than March 1, 2007, would be unwarranted, as infeasible for the general population of TV receiver manufacturers.

With respect to new receivers with screen sizes less than 13 inches, nothing in the record provides any basis for the Commission to determine where these products should fit in the progression established in its 2002 mandate. CEA and CERC believe that experience is necessary with the small chassis products that currently are subject to the Commission's tuner requirements before the feasibility can be determined regarding the inclusion of digital tuners in some of these radically smaller and less expensive products. At present, it appears

²⁷ CEA and CERC Comments, at 13.

that the cost and development burdens on manufacturers, and the impact on consumers, would outweigh any possible benefits.

Respectfully submitted,

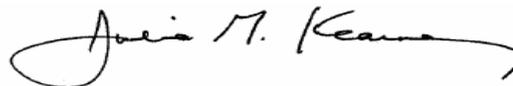


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