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Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Compliance of Digital Converter Boxes )  
With the All Channel Receiver Act )

To: The Commission

PETITION FOR DECLARATORY RULING

1. Pursuant to Section 1.2 of the Commission's Rules and Regulations, the Community Broadcasters Association ("CBA")<sup>1</sup> hereby petitions for a declaratory ruling that converter boxes intended to allow the display of digital television ("DTV") signals on analog receivers violate the All-Channel Receiver Act ("ACRA"), 47 U.S.C. §303(s), and Sections 15.115(c) and 15.117(b) of the Commission's Rules if they block reception of analog over-the-air television broadcast signals, because they do not meet the statutory requirement that they be "capable of adequately receiving all frequencies allocated by the Commission to television broadcasting." Such devices thus may not be verified under Sections 15.101 and 2.952(a) of the Rules, as Section 2.952(a) requires that the equipment comply with all applicable technical standards; and without verification, equipment may not be sold or offered for sale under Section 2.803(a)(2). Converter boxes that block analog signals will also confuse viewers who install those boxes during 2008, when analog service will still be available, and, as discussed *infra*, may deprive some of those viewers of all TV service where reception of local full power digital TV stations is poor because stations are still operating under special temporary authority at with temporary facilities or at reduced power.

<sup>1</sup> CBA is the trade association of the nation's Class A and Low Power Television ("LPTV") stations and represents the interests of those stations in legislative, judicial, and regulatory matters.

2. Since manufacturers are currently producing or planning production of DTV converter boxes, some of these boxes have been designed not to pass through analog signals, and the converter coupon subsidy program of the National Telecommunications and Information Administration (“NTIA”) will launch in a few months, *it is critical that the Commission issue a Declaratory Ruling promptly.*

3. Full power television stations are scheduled to cease analog broadcasting on February 17, 2009.<sup>2</sup> Many consumers will still have, and will want to continue to use, analog television receivers after that date. To ensure that such consumers will be able to view over-the-air digital television signals, the consumer electronics industry will market DTV set-top converter boxes that convert a DTV input signal into an analog output signal. However, the process of keeping analog receivers in service is more complex than just providing converter boxes, because Class A, LPTV, and TV translator stations are not subject to the 2009 deadline, and most of them will not convert to digital operation by then.<sup>3</sup> They will continue to transmit analog signals and must

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<sup>2</sup> This deadline is mandated by Section 309(j)(14) of the Communications Act, 47 USC §309(j)(14).

<sup>3</sup> Section 309(j)(14) by its express terms is limited to full power stations, and the Commission has adopted no regulations requiring Class A, LPTV, and TV Translator stations to cease analog broadcasting. While the Commission did open one window for DTV companion applications by Class A, LPTV, and TV Translator stations, and it permits those stations to apply at any time for authority to flash-cut to digital operation on their analog channel, only a small percentage of those stations have been granted digital companion channel or flash-cut construction permits, and only a handful have actually constructed digital facilities. It will take several years beyond 2009 for the Commission to adopt and implement rules for the Class A/LPTV/TV Translator transition, to issue authorizations for these stations to convert, for the stations to obtain financing, and especially for manufacturers to produce enough new digital transmitters to accommodate all the stations. It must be remembered that according to a Commission public notice released January 26, 2007, there were 1,756 full power TV stations compared to more than 7,000 Class A, LPTV, and TV Translator stations. The logistics of authorizing, funding, supplying equipment, and implementing the DTV transition for some four times the number of stations than have already made the transition will clearly take many years to accomplish as a practical matter, regardless of any public policy considerations.

have access to over-the-air analog television receivers. Consumers must have access to these over-the-air analog signals, or else Class A, LPTV, and TV Translators may well not be able to survive.<sup>4</sup>

4. Based on discussions between representatives of CBA and of prospective manufacturers of DTV converter boxes, two kinds of boxes are planned. Some will behave like (1) a videocassette recorder ("VCR"), which passes through whatever comes through the connected antenna, at least when the box is turned off or when a "TV" toggle option is selected by the user.<sup>5</sup> In contrast, other converter boxes, will not allow any signal to reach the TV receiver (2) passively. They will convert digital signals and will ignore analog signals. Thus they will act as a complete barrier to viewing analog TV signals from Class A, LPTV, and TV translator stations unless the receiver has two separate antenna terminals to which two separate antennas are attached – a configuration that is most unlikely to occur in practice. CBA submits that these latter boxes are statutorily unlawful under the ACRA and the Commission's Rules.

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5. DTV converter boxes are clearly "TV interface" devices as defined in Section 15.3(y) of the Commission's Rules:

<sup>4</sup> It is critical to recognize that very few Class A and LPTV stations have mandatory cable carriage rights under Sections 614(c) and (h) of the Communications Act, and none have any right to be carried on direct broadcast satellites. They are already seriously handicapped, if not completely barred, in trying to reach receivers that are attached to cable or satellite systems. To further reduce their access to receivers by blocking analog input to over-the-air receivers could become the straw that breaks the camel's economic back, resulting in a disastrous loss of the local service, rural service, and outlet for small business enterprises that these stations represent. It is all the more distressing that such a disaster could be caused by government-subsidized devices.

<sup>5</sup> CBA has been advised that Samsung Electronics Co., Ltd. and Echostar Communications Corporation will offer DTV converter boxes that behave in this manner. Their foresight is to be applauded, but it is not a reason to excuse other manufacturers from compliance.

[a]n unintentional radiator that produces or translates in frequency a radio frequency carrier modulated by a video signal derived from an external or internal signal source, and which feeds the modulated radio frequency energy by conduction to the antenna terminals or other non-baseband input connections of a television broadcast receiver.....Examples of TV interface devices are video cassette recorders and terminal devices attached to a cable system or used with a Master Antenna (including those used for central distribution video devices in apartment or office buildings).

VCRs, which are one of the specific examples of a TV interface device, take over-the-air signals and convert them to either a Channel 3 or 4 radiofrequency ("RF") signal or a baseband signal. That is exactly the same thing that DTV converter boxes will do.<sup>6</sup> Thus there can be no question about the fact that DTV converter boxes are TV interface devices.

6. Section 15.115(c) of the Rules states that a:

TV interface device shall be equipped with a transfer switch for connecting the antenna terminals of a receiver selectively either to the receiving antenna or to the radio frequency output of the TV interface device, subject to the following:... (3) A transfer switch is not required for a TV interface device that, when connected, results in the user no longer having any need to receive standard over-the-air broadcast signals via a separate antenna. A transfer switch is not required to be marketed with a cable system terminal device unless that device provides for the connection of an external antenna. A transfer switch is not required for a device that is intended to be used as an accessory to an authorized TV interface device.

DTV converter boxes are intended to be used to receive over-the-air signals, and they do connect to an external antenna. Thus they are not subject to any of the exceptions in the rule and must at a minimum have a transfer switch that will passively deliver over-the-air signals of any nature to the TV receiver to which they are attached. It follows that a converter box that completely blocks any access to analog signals violates the rule.

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<sup>6</sup> The fact that VCRs are included as TV interface devices establishes clearly that a video display mechanism need not be incorporated into the device itself, as long as the device feeds a second device (in this case, a TV receiver) that does display pictures.

7. Section 15.11(c) continues:

(4) An actual transfer switch is not required for a TV interface device, including a cable system terminal device, that has an antenna input terminal(s); provided, the circuitry following the antenna input terminal(s) has sufficient bandwidth to allow the reception of all TV broadcast channels authorized under part 73 of this chapter and: For a cable system terminal device that can alternate between the reception of cable television service and an antenna, compliance with the isolation requirement specified in paragraph (c)(1)(i) of this section can be demonstrated; and, for all other TV interface devices, the maximum voltage appearing at the antenna terminal(s) does not exceed the limit in paragraph (c)(1)(ii) of this section.

Once again, the rule requires DTV converter boxes to have circuitry following the antenna input that allows reception of all TV broadcast signals, which means that any blocking mechanism is forbidden.

8. The rule permits an exception only for devices that are not intended to be used with TV receivers and in addition are so labeled. Section 15.11(c)(5) states:

If a transfer switch is not required, the following label shall be used in addition to the label shown in Sec. 15.19(a): This device is intended to be attached to a receiver that is not used to receive over-the-air broadcast signals. Connection of this device in any other fashion may cause harmful interference to radio communications and is in violation of the FCC Rules, part 15.

Even if DTV converter boxes that block analog signals were labeled, they would still not comply, because they are intended to be attached to an over-the-air receiver and so do not come within the exception in the rule.

9. Sec. 15.117(a) of the Rules requires, with no exceptions, that TV interface devices with tuners that can be used to receive over-the-air signals include DTV tuners:

All TV broadcast receivers shipped in interstate commerce or imported into the United States, for sale or resale to the public, shall comply with the provisions of this section, except that paragraphs (f) and (g) of this section [analog picture sensitivity and noise figure] shall not apply to the features of such sets that provide for reception of digital television signals. The reference in this section to TV broadcast receivers also 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. (h) Digital television reception capability. TV broadcast receivers are required only to provide useable picture and sound commensurate with their video and audio capabilities when receiving digital television signals.

(i) Digital television reception capability implementation schedule...

(iv) Other video devices (videocassette recorders (VCRs), digital video recorders such as hard drive and DVD recorders, etc.) that receive television signals-100% of all such units must include DTV tuners effective March 1, 2007.

The same logic that led the Commission to require DTV tuners, and the statutory authority for doing so, apply equally in reverse. It was necessary to add DTV tuners so that TV receivers could receive all channels allocated by the Commission. If DTV channels could not be received, not all channels would be receivable. It is equally the case that if analog signals cannot be received, not all channels will be receivable.<sup>7</sup> The Commission previously stated: "Like its analog VHF and UHF counterparts, DTV service also operates on a 'frequency' and thus is encompassed within the

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<sup>7</sup> The Commission further stated: "Even accepting *arguendo* CEA and Thomson's position that Congress did not intend the ACRA to give the Commission broad authority to set standards for television receiver performance and capabilities, other than mandating UHF/VHF receive capability, a requirement that new TV sets be capable of receiving DTV signals on all of the channels the Commission has allocated for television service is fully consistent with their narrow view of our authority, namely, that of establishing requirements to ensure that television receivers include the capability to adequately receive all UHF and VHF channels....Inasmuch as DTV stations are assigned to UHF and VHF channels, in the absence of such requirements mandating UHF/VHF reception capability for DTV, consumers would not necessarily be able to receive all UHF and VHF channels on every marketed television set. For example, it would be allowable to market DTV sets that could only receive signals on VHF channels, or, given that the great majority of DTV operations during the transition are on UHF channels, to market sets that could only receive DTV signals on UHF channels. Nothing in the ACRA or its legislative history indicates that Congress intended such a result." *Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, 17 FCC Rcd 15978, 15989-90 at n. 45 (2002).

provisions of the ACRA.”<sup>8</sup> Likewise, analog service operates on a “frequency” and thus is clearly encompassed within the provisions of the ACRA.

10. The fact that February 17, 2009, is not far in the future is not a reason to forego a finding that DTV converter boxes that block analog signals violate the requirement to receive all television channels, for two reasons. First, DTV converter boxes will be sold starting in early 2008, and analog full power TV service will not terminate until 2009. Thus consumers who put DTV converter boxes into service in 2008 will lose access to full power analog signals if those signals are blocked by the boxes. Continued access to analog signals until February 17, 2009, will be important.<sup>9</sup> Even if virtually all full power TV stations are transmitting digital signals, consumers will need time to adjust their antennas and do whatever else may be necessary to receive a usable digital signal. In addition, some full power digital stations are still temporarily operating at reduced power, so parts of their service area will continue to rely on analog reception until full digital facilities are in place.<sup>10</sup>

11. But even more important, as discussed above, less than one-fifth of all television stations will terminate analog service on February 17, 2009. More than four-fifths of the stations will continue analog broadcasting for an unknown period of time. Thus if the Commission does not enforce the ACRA against DTV converter boxes, it will be cutting off access to a vast majority of the TV transmitters in the nation. There is no way that such a result can be reconciled with the

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<sup>8</sup> *Id.*, 17 FCC Rcd at 15991.

<sup>9</sup> The Commission has in the past been extremely reluctant to allow full power analog TV stations to shut down before 2009 unless they operate on channels needed for Qualcomm to launch its new Media-Flo service.

<sup>10</sup> In addition, if Congress for some reason extends the February 17, 2009, deadline, consumers using DTV converter boxes may need access to analog signals for more than just a year.

intent of Congress in the ACRA or the Commission's interpretation thereof when it forbade the sale of TV receivers without digital tuners.

12. The Commission has historically construed the ACRA strictly and narrowly, with exceptions only for devices not "designed" to receive television signals. See *Sanyo Manufacturing Corp.*, 58 R.R.2d 719 (1985) (decision on reconsideration of *Sanyo Manufacturing Corp.*, 56 R.R.2d 681 (1984), *aff'd.*, *Assn. of Maximum Service Telecasters v. FCC*, 65 RR 2d 209 (DC Cir. 1988). DTV converter boxes are clearly designed to receive TV signals. Thus under the rationale of both the *Sanyo* case and the basic decision to require the introduction of DTV tuners into TV sets and VCRs, the Commission must mandate that DTV converter boxes not block the reception of analog over-the-air broadcast signals.

13. The fact that the National Telecommunications and Information Administration ("NTIA") made analog pass-through a permissive rather than a mandatory feature its converter box coupon subsidy program<sup>11</sup> is irrelevant. Section 303(s) of the Communications Act makes no mention of NTIA at all and gives NTIA no authority to ignore or dilute the requirements of the statute.<sup>12</sup> NTIA's decision as to what equipment it will or will not subsidize with coupons does not relieve any manufacturer of the requirement to comply with Sections 15.115 and 15.117 of the Commission's Rules, nor does it authorize or allow verification of any TV interface device pursuant to Sections 15.101 and 2.952(a) of the Rules.

make this point

<sup>11</sup> Technical Appendix 2 to NTIA's decision in its Docket No. 0612242667-7051-01 lists these permitted features:

"Equipment may pass through a NTSC analog signal from the antenna to the TV receiver."

"By-pass switch to permit NTSC pass-through.

See [http://www.ntia.doc.gov/ntiahome/frnotices/2007/DTVFinalRule\\_technical.htm#Appendix2](http://www.ntia.doc.gov/ntiahome/frnotices/2007/DTVFinalRule_technical.htm#Appendix2).

<sup>12</sup> CBA submits that NTIA should have recognized the requirement of Section 303(s) when it adopted its regulations.

14. It is clear that the Commission may issue a Declaratory Ruling as requested herein without further rulemaking, because adjudicatory action is appropriate where only existing law is being applied. Moreover, retroactive application of the ruling, *i.e.*, not exempting models designed in reliance on an assumed contrary interpretation of the law, would not work a “manifest injustice” that could overcome the normal presumption that interpretations of existing law are retroactive. *See Qwest Services Corp. v. FCC*, Case No. 06-1274 (DC Cir. decided December 4, 2007). The U.S. Court of Appeals for the D.C. Circuit stated just two days ago that “[t]he mere possibility that a party may have relied on its own (rather convenient) assumption that unclear law would ultimately be resolved in its favor is insufficient to defeat the presumption of retroactivity when that law is finally clarified. *Id.*, at p. 14-15. In vacating that part of a Commission order that declined to apply a ruling retroactively, the Court further stated that it is an “obvious fact that every loss that retroactive application of its statutory interpretation would inflict on [one party] is matched by an equal and opposite loss that non-retroactivity would inflict on [the other party.]” *Id.* at p. 15. In this case, permitting a violation of Section 303(s) by DTV converter boxes would inflict serious losses on the public and Class A, LPTV, and TV Translator stations. *See par. 17, infra.*

15. Section 15.101 of the Commission’s Rules provides that TV broadcast receivers must be verified pursuant to Section 2.952(c). Section 2.952(c) states that “[v]erification signifies that the equipment has been shown to be capable of compliance with the applicable technical standards...” TV interface devices that block reception of analog signals cannot be shown to comply with the technical standards of Sections 15.115(c) and 15.117(b). Therefore, they cannot be verified by the manufacturer. If they are not verified, Section 2.803(a)(2)

prohibits marketing, including both sale and offer for sale, as well as importation into the country.

16. In sum, there can be no question that the ACRA applies to DTV converter boxes. It is also clear that boxes that do not permit viewers to watch over-the-air analog signals with little or no inconvenience do not comply with either the spirit of the statute or the letter of the applicable sections of Parts 2 and 15 of the Commission's Rules. Therefore, the Commission must declare that it is unlawful for any manufacturer or other party to verify such converter boxes and that as a result, those boxes may not be imported into the United States or marketed here. Any converter box that is properly verified must pass through analog over-the-air signals through the same antenna connection used to receive over-the-air digital signals.



17. The stakes are very high for the public, as well as for Class A, LPTV, and TV Translator stations. The public is entitled to watch these stations and has every expectation of being able to continue to do without wiring and unwiring converter boxes every time they want to change the nature of the signal they are viewing. The stations involved cannot afford to be cut off from over-the-air viewers, especially when they have no legal right to distribution by multichannel video program distributors, including cable and satellite.

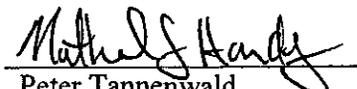
18. In an action taken just last month, the Commission clearly acknowledged the importance of preserving the usability of analog television receivers for reception of Class A, LPTV, and TV Translator stations, when it adopted rules that will require all cable television systems -- even all-digital cable systems -- to deliver must-carry signals in a format viewable on all analog receivers. The Commission stressed the importance of enabling the public to continue to view television on analog receivers, of which tens, if not hundreds, of millions are in use, until at least 2012, when further review of the issue will be undertaken. *See Carriage of Digital*

*Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, FCC 07-170A, released November 30, 2007.<sup>13</sup> Prompt action to issue the Declaratory Ruling requested herein is necessary to avoid an unintended, if not also unexpected, result that will thwart the Commission's clear and current policy of not obsoleting analog receivers in 2009.

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Respectfully submitted,

  
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<sup>13</sup> The Commission stated: "Two commenters argued that our proposed rules were overbroad, because analog-only televisions will not qualify as 'television receivers' after the transition for purposes of the viewability requirement." These arguments fail to recognize, however, that the hard deadline set by Congress does not apply to Low Power television stations, including translators and Class A stations. Thus, Low Power broadcasters, operating hundreds of channels, will still be lawfully transmitting analog signals on February 18, 2009, and for some period of time afterwards. Those consumers who rely on Low Power stations and turn on their over-the-air analog sets that morning to watch a local newscast will be using a device "engaged or able to engage in 'the process of...radio transmission.'" [footnotes omitted]