

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

In the Matter of	)	
	)	
Second Periodic Review of the	)	MB Docket No. 03-15
	)	
Commission's Rules and Policies	)	
Affecting the Conversion	)	RM 9832
To Digital Television	)	

Comments Of The  
Consumer Electronics Retailers Coalition  
On Second Periodic Review  
NPRM

April 21, 2003

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The Consumer Electronics Retailers Coalition (CERC) is pleased to submit these comments in the Commission's Second Periodic Review of the DTV transition.<sup>1</sup> CERC is an incorporated public policy coalition representing the major consumer electronics retailers. Its members include Best Buy Co, Inc., Circuit City Stores, Inc., Good Guys, Inc., The International Mass Retail Association, The National Retail Federation, The North American Retail Dealers Association, RadioShack Corporation, Sears, Roebuck & Co., Tweeter Home Entertainment Group, Inc., and Ultimate Electronics, Inc. The retailers represented by CERC are on the front lines of this transition. They convey consumer needs, requests, and concerns to consumer electronics manufacturers and service providers, then order, purchase, demonstrate, and (hopefully) sell these products to consumers.

The transition to digital television, and, particularly, to HDTV, offers potentially enormous opportunities and comparable risks and pitfalls for consumers. The consumer electronics value proposition, unmatched in the analog era, accelerates further (thanks to "Moore's Law") in the digital era. Despite rapidly declining prices, however, the compelling large-screen displays that HDTV makes possible still represent a greater, and potentially riskier, financial investment by consumers. CERC believes that consumers will continue to invest in the digital future *if* the Commission takes steps to support the opportunities, and limit the risks, inherent in consumer investment in the origination, distribution, display, and home network storage of HDTV and other digital content. From retailers' perspectives, the keys to this will be:

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<sup>1</sup> *In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, MB Docket No. 03-15, RM 9832, Notice of Proposed Rulemaking, 2003 FCC Lexis 377, (Rel. January 27, 2003) (hereinafter, "NPRM").

- Making sure that early DTV adopters are treated fairly, by avoiding abrogation of support for their investment in standard interfaces and means of delivery.
- Providing for predictable upgrade paths for consumers, as the options and means for program distribution, display, and home networking and recording continue to expand and improve.
- Encouraging the origination and distribution of content in the HDTV format. *Consumers investing in HDTV today will welcome marginal increases in HDTV content availability to a far greater extent than they will welcome marginal increases in the number of standard definition channels already available.*
- Maintaining a progressive balance between the consumers' settled expectations, as to home recording, and the concerns of content providers and distributors.
- Opening up to competition device markets that have heretofore been limited to service providers, and assuring that the widest possible range of products can be attached to service systems.

Many of these important objectives will be achieved or furthered by Commission approval and expeditious implementation of the landmark December 19 "Plug & Play" agreement, now the subject of a Further Notice Of Proposed Rulemaking in Dockets 97-80 and 00-67.<sup>2</sup> It has long been CERC's view that success in achieving competitive device entry, as addressed in those Dockets, is a linchpin to achieving most of the other transition goals that have been identified by the Commission.<sup>3</sup> In response to this NPRM, CERC will address the other factors, identified by the Commission as also vital, to which CERC can usefully lend the retail experience and perspective.

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<sup>2</sup> *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, Further Notice of Proposed Rulemaking, 2003 FCC Lexis 100, (Rel. January 10, 2003) (hereinafter, "Plug & Play FNPRM").

<sup>3</sup> See Ex Parte Presentations of CERC filed in CS Docket No. 97-80 (filed March 21, 2002, March 25, 2002, and September 26, 2002).

**I. Retail Efforts To Promote DTV And HDTV Products Have Outpaced The Levels Of Program Distribution To Consumers.**

The Commission poses several questions about promotion of “digital or high definition television and receivers.” While CERC does not gather statistical information from its members, it can provide some insight based on practical experience.

With the important exception of the ability to process scrambled signals delivered over cable television (the subject of the Plug & Play FNPRM in Dockets 97-80 and 00-67), and the ability to interact with the cable headend,<sup>4</sup> the devices available at retail far outpace the HDTV programming services available to most consumers. And it is HDTV programming that will be the key to consumer acceptance and demand: While digital “SD” content can offer an improved picture over NTSC, as delivered over cable and DBS, and most terrestrial broadcasts, it is in the same 4x3 aspect ratio as that of conventional NTSC televisions, whereas, today, most HD-capable displays are built to a 16x9 ratio. This is frustrating for consumers: it means that, except for HDTV programs, most of their MVPD or broadcast viewing on their new, HD-capable sets will not use the entire screen, will not take advantage of its more panoramic view, and will be accompanied by black or colored “side bars.”<sup>5</sup> This is generally not the case for packaged DVDs, which, although of similar SD resolution, offer a much more satisfying viewer experience.

The Commission asks (NPRM, par. 22) how many reception devices “... downconvert the digital signal to analog and how many receive and display the signal in high or standard definition digital? How many TV receivers can receive and display digital programming when directly connected to a cable system or satellite service, and how many require an additional set-top box?” Most integrated DTV receivers, with built-in DTV tuners, will display HDTV. All separate broadcast tuners will tune HDTV signals (or no picture at all would be sent to the display). However, American households own perhaps 300 million NTSC televisions and VCRs, as to which high resolution display capacity will not be necessary as an output from a broadcast or MVPD set-top converter of the HDTV signal. *Accordingly -- particularly if the phaseout of the analog spectrum occurs sooner rather than later, as is discussed below -- CERC sees a huge market for economical conversion devices designed to receive HDTV and output only NTSC-quality signals to television receivers and VCRs.*<sup>6</sup>

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<sup>4</sup> Competitive devices that will be “interactive” in this sense are the subject of ongoing “Phase II” work by the “Plug & Play” parties.

<sup>5</sup> Moreover, consumers purchasing most projection televisions are warned that persistent viewing with these side bars could lead to image “burn-in” problems, so are encouraged to use image “stretching” formats that fill the display screen by horizontal expansion of some or all of the picture.

<sup>6</sup> Even today, NTSC receivers and recording devices are the majority of those sold (although DTV displays now prevail in larger screen sizes). Television receivers on average last 12 - 15 years; as they are supplanted in one room they are still used in another, or in other family households.

Some integrated DTV receivers include QAM tuners, so are capable of tuning and displaying *unscrambled* digital cable programming through direct connection of a digital cable. However, in practice, all or most digital cable signals are delivered in scrambled form.<sup>7</sup> Some receivers are capable of receiving and decoding scrambled DBS transmissions, through use of a licensed descrambler and a “smart card” interface for signal authentication purposes. Some of these can display HDTV programming.

The Commission asks, “How many such devices sold to consumers are so-called “DTV ready” sets without over the air tuners?” In CERC’s view, “DTV ready” is not one of the more useful ways to categorize products. Displays generally are classified as capable of “HD” (High Definition), “ED” (Extended Definition) and “SD” (Standard Definition) resolution. The “ready” qualifier, however, pertains to the display’s ability to mate with a non-integrated tuning or conversion device, *not* to the display’s inherent resolution. The term “HD ready” at least conveys that, when connected to a tuner or converter capable of providing an HD-resolution signal, the product is capable of displaying the signal at HD quality. The term “DTV ready,” by contrast, would not provide any information as to whether the resolution that can be displayed is SD, ED, or HD. Moreover, it is inherently confusing, as most of these HD, ED, and SD displays -- direct view, projection, and flat panel -- are in fact *analog* devices. Their “digital” quality refers to their ability to accept and process a non-NTSC “multi-synch” signal, of greater bandwidth and resolution, that has been *converted from* a digital signal.<sup>8</sup>

This said, the majority of non-NTSC SD, ED, and HD displays sold to date do not have over-air, cable, or satellite DTV tuners (but do have NTSC tuners). About seventy percent of all consumer homes receive their signals primarily via cable, which limits the demand for integral DBS and terrestrial broadcast tuning. Yet, despite congressional enactments in 1992 and 1996, the Commission’s efforts in Dockets 93-7, 97-80, 00-67, and efforts of CERC members to acquire them, television receivers with integral cable tuners are not yet available to consumers.<sup>9</sup>

CERC members and other retailers display HDTV programming to consumers by a variety of methods. Most major retailers will not rely primarily on a “live feed” of a particular broadcast or MVPD channel -- these are likely to

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<sup>7</sup> Commission rules require that the basic tier not be scrambled, but provide for liberal waiver provisions based on signal security concerns. 47 C.F.R. § 76.630 (a). Subjectively, it is CERC’s impression that the result is that most basic tier digital cable signals are scrambled when delivered to consumer homes.

<sup>8</sup> In CERC’s view, the “DTV-aaaa” type of moniker would be more useful for a *conversion* device, of the sort discussed above, that converts DTV signals of various resolutions to NTSC, to service the approx. 300 million-plus NTSC television receivers and VCRs.

<sup>9</sup> See Joint Comments Of The Consumer Electronics Association And The Consumer Electronics Retailers Coalition In Response To Further Notice Of Proposed Rulemaking, March 28, 2003, Plug & Play FNPRM.

carry insufficient HDTV programming, ads for competitors, or material that some customers may find salacious or otherwise objectionable. Rather, retailers either compile their own prerecorded selections or rely on outside vendors to do so. Most of this material is in the HDTV format, and at any given time, most HD-capable displays in a CERC member's store are in fact showing HDTV. However, some HD-capable displays may be showing a DVD, because many consumers are aware that, as we discuss above, DVDs can provide SD program in an aspect ratio that exactly matches that of the consumer's display, resulting in a much more satisfying presentation than that of a mis-matched program of comparable resolution. Some consumers are interested in seeing, before they invest in a wide-screen display what, for them may be their major or *only* available widescreen home DTV presentation.

In summary, CERC believes that the display of HDTV at retail, unfortunately, far outpaces what consumers can expect to receive at home. This point was driven home on this year's "Super Bowl Sunday," when dueling press releases by the National Association of Broadcasters (NAB) and the National Cable & Telecommunications Association (NCTA) sought to assess blame for the number of consumers who did *not* have ABC's excellent HDTV presentation of the game available to them at home.<sup>10</sup>

## **II. The Market For Broadcast Converters To Serve Consumers' NTSC Television Receivers Should Be Driven By The Transition And By Consumer Need Rather Than By Other Objectives, No Matter How Worthy.**

The Commission asks (NPRM par. 82):

[W]e propose to define as a "digital-to-analog converter" units that are capable of converting a digital television broadcast signal to a signal that can be displayed on an analog television set. We invite comment on this definition. Should we consider as a "digital-to-analog converter" a unit that is not capable of displaying in analog format signals originally broadcast in all digital formats? We understand, for example, that some digital cable boxes can display in analog format digital signals originally broadcast in the equivalent of 480i format but not other digital formats, including HDTV. Should these units be considered under 309(j)(14)(B)(ii)?

CERC believes that this question must be answered in the affirmative. In a competitive market, consumers will receive a great many options, through single- and multi-purpose devices, for converting DTV and HDTV signals to

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<sup>10</sup> *Most Cable Viewers Blocked From Access To ABC HDTV Super Bowl Feed*, National Association of Broadcasters News Release, January 27, 2003; *Statement Of Dan Brenner, Senior Vice President, Law & Regulatory Policy, National Cable & Telecommunications Association In Response To Statement Of NAB Regarding HD Super Bowl Carriage*, NCTA News Release, January 27, 2003.

NTSC. The problem with cable devices that are limited in this respect is that consumers have no competitive alternative, hence no choice, in the configuration of the devices available to them.

CERC supports requiring cable carriage of all DTV programs in formats that always give consumers the option of viewing a program in its original and intended resolution. However, the question of origination and carry-through of HDTV quality should be separately addressed. To the extent the Commission regulates, it should do so to *open the doors* to device competition by addressing the delivery of services, and constraints on competitive devices, rather than by limiting competition once it can be achieved.

The Commission also asks (par. 83):

We also request comment on how we should interpret the phrase “generally available” under Section 309(j)(14)(B)(ii). For example, should we require only that digital-to-analog converter boxes be available for sale at retail outlets in the market or for sale or lease from cable operators or satellite providers? How widespread must the availability be to be considered “generally available?” \*\*\* Should the price of such units be considered? Is it sufficient if digital-to-analog converters have been introduced in the market, or should we also examine the number of digital-to-analog converter units already purchased and in use by consumers in the market? Should we also address the possibility of lack of general availability of converters in the face of widespread availability of DTV sets with integrated or non-integrated tuners, thus eliminating the need for converters? What if cable systems in the market are providing signals downconverted from digital to analog at the cable headend so that a digital-to-analog converter is not necessary to view DTV signals?

In CERC’s view, the test for converter availability should be whether consumers, through a competitive market, can maintain reasonable access to programming carried by signals that were available before the return of spectrum. Other regulatory objectives, however laudable, should be separately addressed. Otherwise, the transformative potential of a competitive market may be squandered. As to price parameters for “generally available,” we would compare the converter serving such a purpose to products that are now available to act as source material for NTSC resolution video programming. The most direct example would be the analog VCR. (At present price levels, low-end DVD players, which provide higher quality and resolution, could be used as benchmarks with the same result.)

In light of the objective of continuing the availability of NTSC-quality programming to those who have not resorted to other means to acquire it, it should not make any difference how the signal is converted from a DTV broadcast. Therefore, conversion at the cable headend and subsequent direct tuning by an NTSC television receiver should be considered as comparable to obtaining a device that achieves the same result with the same receiver.

### III. ‘Must Carry’ Obligations Should Be Interpreted To Encourage Reliance On A Competitive Device Market.

The Commission asks comment on the following proposition (par. 89):

[W]e propose that, in order not to be counted toward the 15 percent threshold under Section 309(j)(14)(B)(iii)(I), a household must subscribe to a qualifying MVPD and must also have the capability to view digital broadcast signals. We seek comment on this view. We tentatively conclude that, under 309(j)(14), MVPD subscribers may receive signals in either digital mode (*e.g.*, via either a DTV-capable set with an integrated tuner or a separate DTV set-top converter), or in analog mode *e.g.*, a digital signal converted to analog by a set-top digital-to-analog converter that allows the signal to be displayed on a non-DTV set).

CERC respectfully disagrees. CERC expects that, with expeditious Commission approval and implementation of the “Plug & Play” achievements, a competitive market for ‘navigation devices,’ including conversion and other multi-purpose devices, will be in operation by July 1, 2004 (the first implementation date of the ‘DTV Tuner Mandate’),<sup>11</sup> and in full and diverse competitive swing by 2006. With so many competitive options by then available to consumers, the Commission should be providing an *incentive* for consumers to obtain competitive products, rather (as would its interpretation) a disincentive. If a consumer has access to all DTV channels through an MVPD, then that consumer should not count among the 15%. This is what the rule presently says. It will foster a competitive market, and, thereby, lead to a much faster return of the analog spectrum.

The Commission goes on to ask:

We invite comment on whether cable systems that downconvert digital signals to analog at the cable headend should be considered to be “carrying” digital broadcast signals within the meaning of Section 309(j)(14)(B)(iii)(I). What if the cable system carries the signal in analog format because the signal was delivered to the cable headend via a TV translator that operates only in analog format (*e.g.*, the parent station’s signal was originally broadcast in digital format and downconverted by the translator)? Similarly, how should we count viewers who receive over-the-air analog signals from a translator that has downconverted and rebroadcast the main station’s digital signal? Are such viewers counted toward the 85% if they have DTV tuners even though the stations in their market are not delivering digital signals to them? Is the purpose of Section 309(j)(14): to ensure that viewers do not lose access to broadcast signals, to ensure that the transition to digital actually occurs, or both?

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<sup>11</sup> *In the Matter of 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 (Rel. Aug. 9, 2002) par. 40.

Headend conversion should (as CERC argues above) “count” as maintaining consumer access to the prior content of NTSC broadcasts, *so long as* separate broadcaster obligations to carry HDTV and DTV without degradation are not sacrificed (e.g., due to scarce bandwidth) to achieve this. Issues as to such carriage, and the failure to broadcast in HDTV, are separate issues that should be separately and appropriately addressed. They should not be addressed by biasing or interfering with competition in the device market, or by interpreting rules so as to provide disincentives for the acquisition of competitive products.

The Commission further asks (par. 91):

We note that Section 74.701 of the Commission’s rules requires that TV translators retransmit the signals of the parent station “without significantly altering any characteristic of the original signal other than its frequency and amplitude.” Should our rules permit TV translators to downconvert to analog format a signal originally broadcast by the parent station in digital format?

If done as a substitute for providing digital service to the station’s standard coverage countours, this should not be permitted.

The Commission asks,

As a separate issue, we propose to define television receivers “capable of receiving” DTV signals under 309(j)(14)(B)(iii)(II)(a) as television sets equipped with either integrated or separate (*e.g.*, set-top box) DTV tuners, and request comment on this definition.

In light of the principles we discuss favoring incentives toward competition CERC agrees with this definition.

The Commission asks comment on the following proposition (par. 92):

[F]or a household to be counted in the 15 percent, that household must both be a non-subscriber (“non-subscriber” may include subscribers to MVPDs that carry the required DTV stations but who lack equipment to view such signals in either analog or digital format) and lack the capability to receive DTV signals over-the-air, either through a set with an integrated DTV tuner, via a DTV set-top box, or via a digital-to-analog downconverter. \*\*\* Accordingly, we propose to grant extensions under Section 309(j)(14)(B)(iii) only where the requisite number of television households (15 percent or more) in the market are not capable of receiving digital signals either over the air or via an MVPD.

Based on the factors discussed above, CERC agrees with this formulation.

#### IV. The Additional Labeling Requirements Aired By The Commission Would Sow Rather Than Avoid Consumer Confusion.

The Commission asks several questions about possibly mandating additional point-of-purchase labels:<sup>12</sup>

[1] Should we require labeling on pure monitors that can be used to display video services, which neither receive off-air signals, nor are designed to be “digital cable ready,” to advise consumers that the monitor cannot function to receive programming unless it is attached to an off-air tuner, or cable, or satellite receiver?

[2] Should we require labeling on digital television receivers that are not “digital cable ready” to indicate that the set “will not receive cable or satellite programming without the use of a converter”? \*\*\*

[3] [S]hould [the Commission] require a disclosure label on analog-only sets to inform consumers that a converter or external DTV tuner will be needed to ensure reception of television broadcast signals after stations in the consumer’s market complete conversion to digital-only broadcasting[?]

[4] For example, we could require that all new analog sets display a label stating that “when broadcasters switch to digital broadcasting, this set will not receive or display television signals without the use of a converter.” \*\*\*

[5] Should we require retailers to provide consumers with a digital conversion fact sheet with the purchase of all new television equipment? We seek comment generally on whether the Commission should implement labeling or notice requirements of any type for consumer television equipment to assist the transition and protect consumers.

Based on CERC members’ daily experience in merchandising these products to consumers, CERC believes that these or other elements of such a labeling regime would do far more harm than good. It is one thing to establish a new basic category and to define devices that fit it, as does the “Plug & Play” agreement. It is quite another to come up mandatory, complex formulations about what a product does *not* do, that compete for consumer attention with the market and product-based information that retailers provide to consumers about what the product *does* do. Such labels, with multiple negatives, are inherently confusing. Each of the formulations quoted above is inherently confusing:

[1] three negatives plus “unless”

[2] two negatives plus “without”

[3] “analog only” and “digital-only” in the same sentence

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<sup>12</sup> NPRM pars. 97 and 98 (numbering of the questions supplied).

[4] “not” plus “without”

This is not a problem inherent in the FCC staff’s draftsmanship. The problem with such negative labels or a “data sheet,” rather, stems from the multitude of positive alternatives that a competitive transition is about to offer to consumers. Even after analog broadcasts are shut off, there will be so many ways for the marketplace to service the most humble “analog” TV -- via cable or satellite RF, S-VHS, component video, and composite video interfaces; via standalone converter to the same interfaces; potentially over the Internet -- that there is simply not sufficient room, in any *positive* formulation, to list them all. And, given this fact, any *negative* formulation is not just confusing; it is inherently misleading.

Consumer electronics retailers know how to “package” products for consumers. They already offer DBS and, increasingly, cable services, plus DTV converters and Internet accessories. The DTV tuner order, combined with approval of the Plug & Play regulations, will create immense competitive commerce in converter products of all types. Retailers will not be slow to merchandise the utility of such products with the NTSC television receivers already owned by consumers *and* the ones on their shelves. CERC members strongly oppose the labeling regime on which the Commission asks comment, as confusing to consumers and disruptive of these potential merchandising efforts.

**V. CERC Is Supportive Of PSIP Use, Particularly With Respect To Electronic Program Guides.**

The Commission asks several questions with respect to the use of “PSIP” (par. 114):

The Commission has recognized the utility that the ATSC PSIP Standard offers for both broadcasters and consumers.<sup>13</sup> We seek comment on both whether to require use of PSIP and which aspects of PSIP should be adopted into our rules. If we decide not to require use of PSIP, it is, nevertheless, important to decide if some or all of the PSIP information set forth in ATSC A/65A must be used by those who voluntarily use PSIP. Likewise, are there certain aspects of the PSIP standard that should not be used or required? \*\*\* We seek comment on whether to require broadcasters to include PSIP information with their digital broadcast signals.

CERC members are supportive of the use and utility of PSIP information, which was recognized in the February, 2000 carriage agreement between CEA and NCTA, published in the “Plug & Play” FNPRM. CERC believes PSIP information in media -- broadcast or MVPD -- is of great public benefit whenever

it can provide an option for a competitive product to provide consumers with an Electronic Program Guide, or “EPG.”<sup>14</sup>

**V. Conclusion - A Competitive Market Is The Key To The Transition.**

There is no market more competitive than the consumer electronics retail market. CERC members believe that opening device markets to consumer electronics competition is the single best tonic for the DTV transition. This competition will be the biggest single factor in driving the return of the analog spectrum.

Respectfully submitted,

**The Consumer Electronics Retailers Coalition**

Best Buy Co, Inc.

Circuit City Stores, Inc.

Good Guys, Inc.

The International Mass Retail Association

The National Retail Federation

The North American Retail Dealers Association

RadioShack Corporation

Sears, Roebuck & Co.

Tweeter Home Entertainment Group, Inc.

Ultimate Electronics, Inc.

Of counsel:

*/s/ Robert S. Schwartz*

Robert S. Schwartz

McDermott, Will & Emery

600 13th Street, N.W.

Washington, D.C. 20005

202 756-8081

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<sup>13</sup>The “Plug & Play” agreement, which CERC has endorsed without reservation, rules out access in “Phase I,” “Unidirectional Digital Cable Products,” to the EPG furnished by the cable operator itself, but does not prohibit such products from obtaining guide data and assembling a guide by other means. It reaffirms and attaches the CEA/NCTA agreement on PSIP, but does not address whether cable-programming networks must furnish such data. Given space limitations, generally speaking, a complete EPG can be built through use of PSIP only if the data for each channel is separately carried in the program stream for that channel.