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

In the matter of	)	
	)	
Interference Immunity Performance Specifications for Radio Receivers	)	ET Docket No. 03-65
	)	
Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television	)	MM Docket No. 00-39

To: The Commission

REPLY COMMENTS OF SINCLAIR BROADCAST GROUP INC.

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Dated: August 18, 2003

Summary

In this proceeding, the Commission is considering whether to adopt performance standards for over-the-air DTV receivers. In response, various broadcasters, including Sinclair Broadcast Group Inc. ("Sinclair"), noted that current over-the-air DTV receivers are not capable of reliable reception. In its Comments, Sinclair asked the Commission to expeditiously adopt mandatory minimum performance standards for the selectivity, sensitivity, dynamic range, and multipath tolerance of over-the-air DTV receivers to ensure that these receivers replicate the current ease of reception of analog television.

Sinclair hereby files these Reply Comments to respond to the Comments filed by the Consumer Electronics Association ("CEA") and Zenith Electronics Corporation ("Zenith"), which oppose mandatory performance standards for over-the-air DTV receivers. First, despite the claims of CEA and Zenith, over-the-air DTV receivers on the market today are not capable of providing adequate reception. Current over-the-air DTV receivers have proven incapable of replicating the ease of reception of analog television, where a simple antenna provides adequate reception. Second, while CEA argues that the Commission does not have statutory authority to adopt mandatory receiver performance standards, there are in fact at least two independent sources of statutory authority – the All Channel Receiver Act and Section 302(a) of the Communications Act - that permit the Commission to adopt mandatory performance standards for over-the-air DTV receivers. Third, while CEA argues that mandatory standards will stifle the incentive to improve over-the-air receivers, nothing would prevent consumer electronics manufacturers from developing better performing receivers in response to consumer demands that go beyond the performance standards adopted by the Commission in this proceeding.

Finally, in response to the Comments filed by the Advanced Television Systems Committee, Inc. ("ATSC") noting that it is working to develop a "Recommended Practice" for

over-the-air DTV receiver performance, Sinclair again emphasizes that the ATSC's efforts are unlikely to result in meaningful performance standards. Rather, only Commission-mandated standards will provide manufacturers with the necessary incentive to solve over-the-air DTV reception problems.

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Sinclair Broadcast Group Inc. ("Sinclair") hereby files these Reply Comments in response to Comments filed on the Commission's *Notice of Inquiry* ("*NOI*") considering the adoption of minimum performance standards for over-the-air DTV receivers.[1] Sinclair files these Reply Comments to demonstrate that, despite the claims of consumer electronics manufacturers to the contrary, (i) current over-the-air DTV receivers are incapable of providing adequate reception; (ii) the Commission has the requisite statutory authority to adopt mandatory standards for over-the-air DTV receivers; (iii) mandatory standards will not stifle the incentive to develop improvements in receivers; and (iv) the efforts of the Advanced Television Systems Committee, Inc. ("ATSC") to develop a "Recommended Practice" for over-the-air DTV receiver performance will not suffice to ensure that these receivers are capable of providing adeqaute reception.

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[1] *See Interference Immunity Performance Specifications for Radio Receivers, Notice of Inquiry*, ET Docket No. 03-65 ("*NOI*") (March 24, 2003). The *NOI* was published in the *Federal Register* on May 5, 2003. 68 FR 23677 (May 5, 2003). Thus, these Reply Comments are timely filed on August 18, 2003, 105 days after publication of the *NOI* in the *Federal Register*.

Background

In the above-captioned *NOI*, the Commission is considering whether to incorporate receiver standards into its spectrum policy on a broader basis. In particular, the Commission asked whether it should adopt performance standards for over-the-air DTV receivers and, if so, what values should be specified for these standards. *NOI* at ¶¶ 34-36. The Commission also sought comment on its proposal for a voluntary standards regime for over-the-air DTV receivers whereby broadcasters, electronics manufacturers, consumers, and others would identify performance parameters and develop minimum performance specifications for these parameters. *Id.* at ¶ 36.

In response, Sinclair filed Comments urging the Commission to expeditiously adopt mandatory minimum performance standards for over-the-air DTV receivers to ensure that these receivers replicate the current ease of reception of analog television.[2] By adopting performance standards for over-the-air DTV receivers, the Commission will facilitate three crucial public policy goals: (i) preserving a free, ubiquitous, and wireless television service, which is essential considering the vital public interest benefits of over-the-air television, such as emergency broadcasts; (ii) expediting the DTV transition; and (iii) facilitating sharing of broadcast television spectrum. *Sinclair Comments* at 6-9. Sinclair proposed four specific standards for over-the-air DTV: selectivity, sensitivity, dynamic range, and multipath tolerance. *Id.* at 9-12. Sinclair also explained that the Commission should adopt mandatory rather than voluntary standards given that broadcasters do not control the production of receivers and those entities that do produce receivers have demonstrated little interest in devoting resources to improving over-the-air DTV reception. *Id.* at 12-15. To the extent the Commission nonetheless adopts

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[2] *See* Comments of Sinclair Broadcast Group Inc. ("Sinclair"), ET Docket No. 03-65 (July 21, 2003) ("*Sinclair Comments*").

voluntary standards, Sinclair explained that these standards must be accompanied by a meaningful labeling regime whereby receivers that do not comply with the voluntary standards would be clearly labeled to indicate that over-the-air reception may not be possible using a simple antenna and information would be provided as to the cost and type of outdoor antenna that must be purchased and installed to have any potential of receiving over-the-air DTV signals. *Id.* at 13-15.

Other broadcasters also supported the adoption of some form of performance standards for over-the-air DTV receivers. In their Joint Comments, the National Association of Broadcasters ("NAB") and the Association for Maximum Service Television ("MSTV") supported the Commission's call for industry groups to develop voluntary performance specifications for over-the-air DTV receivers.[3] NAB/MSTV explained that consumer electronics manufacturers appear to have shifted their focus to producing digital cable receivers and that they may not have the necessary incentives to continually improve over-the-air reception. *NAB/MSTV Comments* at 8-9. NAB/MSTV discussed how development of standards for over-the-air DTV receivers will result in consumer confidence in the ability of DTV receivers to receive over-the-air signals, thereby expediting acceptance of DTV. *Id.* at 7. Similarly, Pappas Telecasting Companies ("Pappas") urged the Commission to adopt voluntary standards for over-the-air DTV receivers.[4] Pappas noted that the development of standards for over-the-air DTV receivers is crucial to expediting the DTV transition and will give substantive effect to the Commission's requirement that new over-the-air receivers contain a tuner capable of receiving

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[3]*See* Joint Comments of the National Association of Broadcasters ("NAB") and the Association for Maximum Service Television ("MSTV"), ET Docket No. 03-65 (July 21, 2003) ("*NAB/MSTV Comments*").

[4]*See* Comments Pappas Telecasting Companies ("Pappas"), ET Docket No. 03-65 (July 21, 2003) ("*Pappas Comments*").

over-the-air DTV signals. *Pappas Comments* at 9-10. In adopting voluntary standards for over-the-air DTV receivers, Pappas urged the Commission to follow a procedure similar to the one the Commission is currently using for the cable "Plug and Play" Memorandum of Understanding, in which the Commission is proposing to codify in its rules the voluntary performance standards developed by the consumer electronics and cable industries. *Id.* at 3-5. Pappas explained that there is no reason for the Commission to play a less active role in promoting over-the-air DTV reception than it has in promoting digital cable reception. *Id.* at 4-5. As for specific performance standards, Pappas, like Sinclair, noted that standards are necessary for selectivity, sensitivity, dynamic range, and multipath tolerance. *Id.* at 15-19.

In their Comments, the Consumer Electronics Association ("CEA") and Zenith Electronics Corporation ("Zenith") both supported voluntary standards for over-the-air DTV receivers, but opposed mandatory standards.[5] As an initial matter, both CEA and Zenith claimed that current over-the-air DTV receivers perform adequately and are continuing to improve. *CEA Comments* at 7-8; *Zenith Comments* at 2. CEA also claimed that the Commission does not have statutory authority to adopt mandatory performance standards for over-the-air DTV receivers. *CEA Comments* at 11-13. CEA argued further that adoption of mandatory standards would be poor policy because mandatory standards would stifle the incentive of manufacturers to develop improvements in receivers. *Id.* at 2. Finally, ATSC filed Comments informing the Commission that it has begun work on a "Recommended Practice" for over-the-air DTV receiver performance.[6]

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[5] *See* Comments of Consumer Electronics Association ("CEA"), ET Docket No. 03-65 (July 21, 2003) ("*CEA Comments*"); Comments of Zenith Electronics Corporation ("Zenith"), ET Docket No. 03-65 (July 21, 2003) ("*Zenith Comments*").

[6] *See* Comments of Advanced Television Systems Committee, Inc ("ATSC"), ET Docket No. 03-65 (July 18, 2003) ("*ATSC Comments*").

Discussion

I. CURRENT OVER-THE-AIR DTV RECEIVERS ARE INCAPABLE OF REPLICATING THE EASE OF RECEPTION OF ANALOG TELEVISION

As Sinclair and other broadcasters discussed in their Comments, current over-the-air DTV receivers do not provide adequate reception. *Sinclair Comments* at 3-6. As NAB/MSTV notes, current over-the-air DTV receivers do not conform to the technical assumptions underlying the DTV Table of Allotments. *NAB/MSTV Comments* at 2, 9. Conversely, consumer electronics manufacturers claim that current over-the-air DTV receivers are in fact capable of providing adequate reception. *CEA Comments* at 7-8; *Zenith Comments* at 2. For support, CEA cites ATSC and Commission studies conducted in April 2001 which CEA claims demonstrated that over-the-air DTV receivers outperformed analog receivers. *CEA Comments* at 8. CEA fails to mention that in these tests the DTV receiver antennas were purposefully oriented to optimize over-the-air reception. The Commission did not test DTV receivers to determine whether they replicated the ease of reception of analog television, which allows consumers to receive signals without the need for precise orientation of the receiver antenna. Thus, the reports on which CEA relies simply do not support the claim that over-the-air DTV receivers provide the same ease of reception as analog receivers. Consumers will only accept DTV when over-the-air DTV receivers are capable of replicating the ease of reception of analog television, where a simple antenna provides adequate reception without the need for careful orientation. To date, however, consumer electronics manufacturers have proven incapable of producing over-the-air DTV receivers that provide the same ease of reception as analog receivers.

Zenith argues that, even without performance standards, marketplace forces will continue to demand improvements in over-the-air DTV receivers. *Zenith Comments* at 2. Since the DTV transition began, however, the marketplace has failed to produce receivers that are capable of

providing adequate reception of over-the-air DTV signals. With the emergence of cable and satellite, consumer electronics manufacturers have indicated that they no longer consider over-the-air television as a worthwhile market. Thus, despite Zenith's claims, it is unlikely that marketplace forces alone will produce adequate over-the-air DTV reception.

Finally, CEA again blames broadcasters, and not poorly performing receivers, for inadequate over-the-air DTV reception, claiming that the low power at which some broadcasters operate their DTV facilities makes reception impossible. *CEA Comments* at 7 n.13. As Sinclair explained in its Comments, even in areas where broadcasters are operating at fully authorized power, current over-the-air DTV receivers still fail to provide adequate reception. *Sinclair Comments* at 5-6. The basic engineering flaw in current over-the-air DTV receivers is the inability to decode digital signals in multipath-impaired signal environments using simple antennas.[7] Even if all DTV transmitters were operating at their maximum authorized power levels, this would have no impact on improving over-the-air DTV reception until receivers can decode multipath-impaired signals.

II. THE COMMISSION HAS THE REQUISITE STATUTORY AUTHORITY TO ADOPT MANDATORY PERFORMANCE STANDARDS FOR OVER-THE-AIR DTV RECEIVERS

CEA argues that the Commission does not have statutory authority to adopt mandatory receiver performance standards. *CEA Comments* at 11-13. Despite CEA's claim, there are at least two independent sources of statutory authority – the All Channel Receiver Act ("ACRA")[8]

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[7] *See* Letter from Kathryn R. Schmeltzer, Counsel for Sinclair, to Ms. Marlene H. Dortch, FCC, MB Docket No. 03-15 (June 17, 2003).

[8] 47 U.S.C. § 303(s).

and Section 302(a) of the Communications Act[9] - that permit the Commission to adopt mandatory performance standards for over-the-air DTV receivers.

The ACRA provides the Commission with the "authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of *adequately receiving* all frequencies allocated by the Commission to television broadcasting . . . ." 47 U.S.C. § 303(s) (emphasis added). The Commission has decided that the ACRA applies to DTV and, pursuant to its authority under the ACRA, has required new TV receivers to include a DTV tuner.[10] The Commission has also explained that the ACRA provides it with authority to require that receivers "adequately" receive all frequencies and that the legislative history indicates that the word "adequately" was added to the ACRA to ensure that all receivers would provide "satisfactory and usable reception." *DTV Tuner Order* ¶ 29. Moreover, the Commission has explained that mere "receiving potential which cannot be translated into an audience" does not fulfill the purposes of the ACRA.[11] To similar effect, the Commission has stated that "to suggest that statutory requirements [of the ACRA] are somehow satisfied simply where a

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[9]47 U.S.C. § 302(a).

[10]*See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Second Report and Order and Second Memorandum Opinion and Order*, 17 FCC Rcd 15978, MM Docket No. 00-39 (Aug. 9, 2002) ("*DTV Tuner Order*") (adopting 47 C.F.R. § 15.117(h)).

[11]*See Amendment of Part 15 of the Rules and Regulations with Regards to All-Channel Television Receivers, Report and Order*, 21 FCC 2d 245, ¶ 7 (February 2, 1970). Similarly, in response to an argument that Congress was solely concerned with the electrical performance of TV receivers, the Commission explained that "to argue that authority delegated by the Congress relates only to electrical performance, one must assume that the Congress was concerned solely with the capability of the receiving apparatus to receive a television signal in some abstract sense, and that the Congress had no concern as to whether the purchaser of the receiver would be able to obtain a television picture." *See Amendment of Part 15 of the Rules and Regulations with Regards to All-Channel Television Receivers*, Memorandum Opinion and Order, 23 FCC 2d 793, ¶ 14 (June 29, 1970). The Commission stated that such a position was "untenable." *Id.* at ¶ 16.

receiver picks up the frequency but is incapable of displaying the signal in a viewable format strikes us as an absurd reading of the ACRA." *DTV Tuner Order* ¶ 29.[12] The Commission has adopted a number of performance standards for analog television receivers pursuant to the ACRA, including the following:

- In 1962, the FCC adopted a rule regarding noise figure and peak picture sensitivity standards for the UHF portion of a TV receiver.[13]

- In 1970, the FCC required that UHF tuning mechanisms and tuning aids be comparable in capability and quality to those used with VHF channels.[14] The FCC explained that the tuning process is essential to TV viewing and thus if the UHF tuning process is inadequate by comparison with the VHF tuning process, UHF receiving capability will likewise be inadequate. In the 1970's, the FCC took additional action regarding UHF tuning, including authorizing use of a 70-position, non-memory UHF detent tuning system.[15]

- In 1976, the FCC required manufacturers who market TV receivers with affixed VHF antennas to also affix UHF antennas.[16] The FCC also mandated that if a VHF antenna is provided with the receiver but not affixed, a UHF antenna must be also be provided.

- In 1978, the FCC reduced its maximum UHF noise figure for TV receivers from 18 dB to 14 dB for all new sets manufactured beginning October 1, 1981.[17]

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[12]In its Petition for Partial Reconsideration of the *DTV Tuner Order*, Sinclair explained that merely requiring new television receivers to include a DTV tuner without specifying how those tuners must perform was not sufficient to fulfill the purposes of the ACRA. *See Sinclair Broadcast Group Inc., Petition for Partial Reconsideration*, MM Docket No. 00-39 (filed November 8, 2002). Rather, Sinclair explained that, to fulfill the purposes of the ACRA, the Commission must adopt performance requirements to ensure that the tuners the Commission has mandated are capable of "adequately receiving" over-the-air DTV signals. *See id.*

[13]*See All Channel Television Receiver Rules (All Channel Act), First Report and Order*, Docket 14760, 27 FR 11698 (November 28, 1962); *see also* 47 C.F.R. § 15.117(f), (g).

[14]*See Amendment of Part 15 of the Rules and Regulations with Regards to All-Channel Television Receivers, Report and Order*, 21 FCC 2d 245 (February 2, 1970).

[15]*See Comparable Television Tuning Regulations, Report and Order*, 32 FCC 2d 612 (Nov. 30, 1971); *Comparable Television Tuning Regulation, Report and Order*, 43 FCC 2d 395 (Oct. 24, 1973); *Amendment of Part 15 Rules and Regulations, Report and Order*, 61 FCC 2d 962 (1976).

[16]*See Amendment of Part 15 of the Commission's Rules Relating to Television Broadcast Receiver Antennas*, 62 FCC 2d 164 (December 30, 1976).

Thus, as the Commission has already acknowledged, it has the requisite statutory authority pursuant to the ACRA to adopt performance standards for TV receivers, including DTV receivers, to ensure that they can "adequately receive" all television signals.

Section 302(a) of the Communications Act provides another source of statutory authority for the Commission to adopt standards for over-the-air DTV receivers. 47 U.S.C. § 302(a). Section 302(a) provides that the "Commission may . . . make reasonable regulations . . . establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy." *Id.* As National Public Radio, Inc. ("NPR") notes in its Comments, the legislative history of Section 302(a) reveals that "'television sets would be typical examples of the equipment subsumed under the term 'home electronic equipment and systems.'"[18] CEA admits that the Commission has statutory authority pursuant to Section 302(a) to adopt "interference immunity" standards for home electronics equipment, but argues that this authority does not extend to adoption of "performance requirements." *CEA Comments* at 12. Even assuming that CEA's interpretation of Section 302(a) is correct, Sinclair notes that the four standards it and Pappas have proposed (selectivity, sensitivity, dynamic range, and multipath tolerance) are all "interference immunity" standards. These four parameters all pertain to the ability of television receivers to "reduce their susceptibility to interference" from unwanted signals in order to allow for reception of the desired signal. 47 U.S.C. § 302(a). Thus, the four types of standards proposed by Sinclair and

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[17] *UHF Television Receiver Noise Figures, Report and Order*, 69 FCC 2d 1866 (Aug. 4, 1978).

[18] *See* Comments of National Public Radio, Inc., ET Docket No. 03-65 (July 21, 2003) (quoting H.R. Conf. Rep. No. 765, 97th Cong., 2d Sess. 32 (1982)).

Pappas fall within even CEA's narrow interpretation of the scope of the Commission's statutory authority to adopt receiver standards pursuant to Section 302(a).

III. MANDATORY PERFORMANCE STANDARDS FOR OVER-THE-AIR DTV RECEIVERS WILL NOT STIFLE THE INCENTIVE TO IMPROVE RECEIVER PERFORMANCE

CEA argues that mandatory standards are poor policy because they will "stifle the incentive to develop and deploy future receiver improvements." *CEA Comments* at 2, 5. Despite CEA's claims, mandatory standards will not stifle the incentive to improve receiver performance. If adopted, the minimum standards suggested by Sinclair and Pappas will merely ensure that DTV receivers have the ability to receive over-the-air DTV signals with a simple antenna. Nothing would prevent consumer electronics manufacturers from developing better performing receivers that go beyond the standards adopted by the Commission. Indeed, if the market demands that electronics manufacturers build better performing over-the-air DTV receivers than that contemplated by the Commission's rules, then manufacturers will have the incentive to produce improved receivers. However, if the market does not demand improvement in receiver performance, then Commission-mandated minimum performance standards will ensure that consumers can receive at least some level of over-the-air DTV reception capability.

IV. ATSC'S EFFORTS TO DEVELOP VOLUNTARY STANDARDS WILL NOT SUFFICE TO ENSURE ADEQUATE OVER-THE-AIR DTV RECEPTION

As Sinclair noted in its Comments, ATSC's efforts to develop voluntary performance standards are unlikely to ensure adequate over-the-air DTV reception. *Sinclair Comments* at 14-15.[19] ATSC's own Comments on the *NOI* support this position. For example, ATSC notes that

[19] *See* Comments of Microsoft Corporation, ET Docket No. 03-65 (July 21, 2003), at 14 ("experience suggests that for all their benefits and importance, industry standards processes can often be as lengthy and politically driven as any regulatory proceeding").

it is not developing a "standard"; rather, it is developing a "Recommended Practice" which ATSC explains "augment[s] Standards" and is a "document that states specifications that are *thought to be advisable*." *ATSC Comments* at 2 (emphasis added). As Sinclair explained in its Comments, manufacturers are not devoting the necessary resources to resolving over-the-air DTV reception problems. *Sinclair Comments* at 3-6; *see also NAB/MSTV Comments* at 8-9. An ATSC "Recommended Practice" is hardly sufficient to motivate consumer electronics manufacturers to now reverse course and begin focusing their attention on improving over-the-air DTV reception. Only Commission-mandated standards will provide manufacturers with the necessary incentive to solve over-the-air DTV reception problems. *See Sinclair Comments* at 5. Moreover, ATSC demonstrates a lack of resolve to develop its "Recommended Practice" in an expeditious manner, stating that it is "difficult to guarantee a completion date" but that it "expect[s] to have a draft completed by early 2004." *ATSC Comments* at 2. Facilitating over-the-air DTV reception is far too critical of a public policy goal for the Commission to rely on ATSC, which is already qualifying how quickly it can develop its "Recommended Practice." For any voluntary standards setting process to result in meaningful standards, the Commission must play a central role and must establish a stringent timeline for adoption of voluntary standards. *Sinclair Comments* at 15.

Conclusion

For the reasons discussed above, Sinclair continues to urge the Commission to expeditiously adopt minimum performance standards for over-the-air DTV receivers.

Respectfully submitted,

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I, Sylvia A. Davis, a secretary with the law firm of Shaw Pittman LLP, hereby certify that on this 18th day of August 2003, served a true copy of the foregoing "REPLY COMMENTS" by hand delivery upon the following:

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