

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 | ) | RM - 9832           |
| Affecting the Conversion        | ) |                     |
| To Digital Television           | ) |                     |

**SECOND REPORT AND ORDER**

**Adopted: April 25, 2007**

**Released: May 3, 2007**

By the Commission: Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell issuing separate statements.

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**I. INTRODUCTION**

1. In this *Second Report and Order in the Second DTV Periodic Review*, we take up the issue of labeling of television receiving equipment, which was raised in the *Second DTV Periodic NPRM*.<sup>1</sup> In light of the fixed deadline – February 17, 2009 – established for the end of

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<sup>1</sup> *Second DTV Periodic NPRM*, 18 FCC Rcd 1279 (2003). This Order applies to televisions, television receivers, and other television receiving equipment, which includes television sets and other video devices, such as video- (continued....)

analog television broadcasting, we now conclude that it is necessary and appropriate to require retailers to provide consumers with information regarding this transition date at the point of sale.<sup>2</sup> Specifically, we will require sellers of television receiving equipment that does not include a digital tuner to disclose at the point-of-sale that such devices include only an analog tuner and therefore will require a converter box to receive over-the-air broadcast television after February 17, 2009. Consumers expect that equipment for sale today that is capable of receiving “television” is and will continue to be able to receive over-the-air broadcast signals, and, if not, then such material information should be disclosed prior to purchase. The successful completion of the digital television (“DTV”) transition depends upon satisfaction of this basic consumer expectation. For these reasons, in this Order we adopt disclosure requirements to ensure that consumers receive this important information regarding the limitations of analog-only television receivers at the point of sale.

## II. BACKGROUND

2. The *Second DTV Periodic NPRM* asked whether we should require a mandatory label on analog-only sets to inform consumers at the point of sale that a converter or external DTV tuner will be needed to ensure reception of television broadcast signals after stations complete the conversion to digital-only broadcasting.<sup>3</sup> In the *First Report and Order in the Second DTV Periodic Review*, we deferred determination of the need to require labeling to this *Second Report and Order*.<sup>4</sup> With the establishment by Congress of a hard and certain deadline for the end of analog transmissions by full power television stations, we now conclude that it is necessary to ensure that consumers are aware at the point of purchase of that deadline and the impact that it will have on analog-only television receivers.

### A. Second DTV Periodic Review

3. The *Second DTV Periodic NPRM* invited comment on the need for a point of sale disclosure label on analog-only devices or a digital transition fact sheet to inform consumers that a converter or external DTV tuner will be needed to ensure reception of television broadcast signals after stations complete conversion to digital-only broadcasting.<sup>5</sup>

(Continued from previous page) \_\_\_\_\_  
cassette recorders and digital video recorders, that are covered by the Commission’s digital television reception capability implementation schedule. See 47 C.F.R. § 15.117(i)(1)(iv). See also discussion of DTV Tuner Orders, para. 8 and note 26 *infra*.

<sup>2</sup> See *infra* note 29 (defining “point of sale”).

<sup>3</sup> *Second DTV Periodic NPRM*, 18 FCC Rcd at 1315 ¶ 98.

<sup>4</sup> The *First Report and Order* also deferred analysis of section 309(j)(14)(A,B) of the Communications Act of 1934, as amended (the “Act”), which established December 31, 2006, as the deadline for the transition from analog to digital television service, subject to exceptions and extensions on a market-by-market basis. See former 47 U.S.C. § 309(j)(14). In February 2006, the DTV Act was enacted as part of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”). The DTV Act amended Section 309(j)(14)(A) by establishing February 17, 2009 as the final date for transmission of analog signals by full power television broadcasters and eliminated subsection (B), which had provided grounds for extension of the deadline. Title III of the DRA is the DTV Act. See also 47 U.S.C. § 337(e).

<sup>5</sup> *Second DTV Periodic NPRM*, 18 FCC Rcd at 1315 ¶ 94. The *Notice* also asked about plans to manufacture “pure monitors” (without any tuner) that can receive digital format transmissions via cable or satellite but not from signals (continued....)

4. When the Commission issued the *Notice* for the Second DTV Periodic Review in 2003, concerns about consumer understanding had been heightened by a General Accounting Office (“GAO”) Report to Congress in November 2002 that found that at least 40 percent of the public was unfamiliar with the digital transition.<sup>6</sup> This 2002 GAO Report also found that 68 percent of those surveyed did not know that when the transition ends, consumers with analog-only devices will be unable to continue receiving over-the-air broadcast television without use of an external digital tuner or converter.<sup>7</sup> In addition, it concluded that retail sales personnel often provide inaccurate information about both digital programming availability and equipment needed to receive and display digital programming, particularly over-the-air.<sup>8</sup> Another study in 2003 found that 25 percent of Americans thought they owned a high definition television set, while HDTV sales showed that only a small fraction of these consumers could possibly have been correct in their understanding of the capabilities of their televisions.<sup>9</sup>

5. This concern has not been diminished by more recent findings. A study in June 2004 reported that 37 percent of adults were at least somewhat familiar with HDTV and 87 percent expressed vague awareness but lacked clear understanding.<sup>10</sup> In addition, a more recent GAO study in 2005 noted that consumers are still confused about the transition.<sup>11</sup> This 2005 GAO study reported that consumers may be reluctant to buy digital equipment, which is generally more expensive than analog-only devices, because they lack accurate knowledge about the transition and believe they will always have a choice between analog and digital signals over-the-air.<sup>12</sup> Moreover, a very recent survey by the Association of Public Television Stations (“APTS”) found that 61 percent of those surveyed said that they had “No Idea” that the DTV transition was taking place, 10 percent said they had “Limited Awareness,” while 17 percent said

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broadcast over-the-air and requested information on the plans to label such monitors to describe reception limitations. *Second DTV Periodic NPRM*, 18 FCC Rcd at 1315 ¶¶ 97-98.

<sup>6</sup> See “TELECOMMUNICATIONS: Additional Federal Efforts Could Help Advance Digital Television Transition,” General Accounting Office Report, GAO-03-7, Nov. 2002, (“2002 GAO Report”) at 15. The General Accounting Office is now known as the Government Accountability Office.

<sup>7</sup> Only 14 percent of those surveyed by the GAO were “very familiar” with the difference between analog and digital televisions. GAO speculates that even this number may be high because consumers may be confusing current digital television services provided by cable or satellite with DTV. 2002 GAO Report at 16 & n.12. Over 80 percent of consumers were unaware or only somewhat aware of the ongoing transition to digital television. 2002 GAO Report at 15.

<sup>8</sup> 2002 GAO Report at 18-19 (GAO staff visited 23 stores in five states). See also *Belo Comments* at 7.

<sup>9</sup> Phillips Electronics CEO, Gerald Kleisterlee, speech at Consumer Electronics Show, Jan. 12, 2004, <http://www.newscenter.philips.com/InformationCenter/NewsCenter/FArticleDetail.asp?lArticleId=3188&lNodeId=610>.

<sup>10</sup> See CTAM, *HDTV: Consumers Getting the Picture*, CTAM Pulse, May/June 2004, at 2.

<sup>11</sup> See *Digital Television Transition Issues Related to an Information Campaign Regarding the Transition*, General Accounting Office Report, Sept. 6, 2005 (2005 GAO Report).

<sup>12</sup> 2005 GAO Report at 6-7 (reporting on stakeholders, including retailer who said consumers are reluctant to buy digital equipment because they lack accurate knowledge about the transition and believe they will always have a choice between analog and digital signals over-the-air).

they were “Somewhat Aware” and less than 8 percent said they were “Very Much Aware.”<sup>13</sup> The results from that survey also indicate that awareness of the forthcoming transition – even after enactment of a statutory deadline – remains low. The need for labeling of analog-only televisions also has been mentioned in Congressional hearings, both in testimony and from members on both sides of the aisle.<sup>14</sup> Both House and Senate Committees have proposed legislation to require labeling of analog-only televisions to address these concerns.<sup>15</sup>

6. In the *Second DTV Periodic NPRM*, most parties who commented on labeling supported the need for Commission action to address consumer expectations, particularly with regard to analog-only television equipment.<sup>16</sup> MSTV and NAB were concerned that a label describing a receiver’s functionality may not go far enough to adequately notify consumers of the transition from analog to digital service.<sup>17</sup> NBC and Telemundo expressed concern that consumers will waste money buying equipment that will soon be obsolete and proposed a labeling requirement to notify consumers that after the transition, analog equipment will not deliver television signals without a converter.<sup>18</sup> By contrast, parties opposing any labeling requirement contended that marketplace incentives will ensure that consumers are well-informed, and that there is no evidence that manufacturers would not inform consumers of product limitations.<sup>19</sup> The Consumer Electronics Association (“CEA”) offered to consider voluntary labeling if manufacturers determined there is consumer confusion.<sup>20</sup> The Consumer Electronics Retailers Council (“CERC”) expressed concern that labels describing what equipment does

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<sup>13</sup> See <http://www.apt.org/> and <http://www.apt.org/news/DTVSURVEY.cfm> (survey conducted third quarter of 2006; results reported Jan. 31, 2007) (website visited Feb. 8, 2007).

<sup>14</sup> For example, on February 17, 2005, the House Subcommittee on Telecommunications and the Internet held a hearing on “The Role of Technology In Achieving A Hard Deadline for the DTV Transition.” Rep. Bobby Rush (D-IL) and K. James Yager, CEO, Barrington Broadcasting, testifying on behalf of the NAB and MSTV, expressed belief in requiring warning labels on analog-only sets to alert consumers to the limited useful life of their television sets. *The Role of Technology In Achieving A Hard Deadline for the DTV Transition, Before the House Energy and Commerce Committee, Subcommittee on Telecommunications and the Internet*, 109th Cong. , pp. 53-54 (2005) (statements of Bobby Rush, Representative, United States House of Representatives and K. James Yager, CEO, Barrington Broadcasting on behalf of the NAB and MSTV). During a subsequent “DTV Staff Discussion Draft of the DTV Transition Act of 2005,” on May 26, 2005, Rep. Joe Barton (R-TX), Rep. Albert Wynn (D-MD) and Rep. Rush reiterated their concern about the need for and absence of labeling. *DTV Staff Discussion Draft of the DTV Transition Act of 2005, Before the House Energy and Commerce Committee, Subcommittee on Telecommunications and the Internet*, 109th Cong. pp. 7-8, 12, 13, respectively (2005) (statements of Joe Barton, Bobby Rush, and Albert Wynn, Representatives, United States Congress).

<sup>15</sup> See Spectrum Availability for Emergency-Response and Law-Enforcement to Improve Vital Emergency Services Act, S. 1268, 109th Cong. § 6 (2005); Deficit Reduction Act of 2005, H.R. 4241, 109th Cong. § 3409 (2005); Digital Television Consumer Education Act, H.R. 5264, 109th Cong. § 2 (2005); and Digital Television Consumer Education Act of 2007, H.R. 608, 110th Cong. § 2 (2007).

<sup>16</sup> See MSTV/NAB Comments at 35; NBC/Telemundo Comments at 12; Crown Castle Comments at 10 (inform consumers about coming transition when they buy analog-only television equipment to avert consumer backlash); Belo Comments at 7; Sinclair Comments at 22; Thomas Smith Comments ¶ 18.

<sup>17</sup> MSTV/NAB Comments at 25-26.

<sup>18</sup> NBC/Telemundo Comments at 12.

<sup>19</sup> See CEA Comments at 23; Thomson Comments at 11.

<sup>20</sup> CEA Comments at 23.

not do will be harmful and interfere with merchandising efforts.<sup>21</sup> CERC contended that negative formulations are misleading because there is inadequate room to list all the positive formulations on a label.<sup>22</sup>

## B. DTV Tuner Orders

7. In 2002, the Commission adopted a schedule for the phase-in of television receivers to be equipped with digital tuners.<sup>23</sup> The *DTV Tuner Order* initially required that all TV receivers with screen sizes greater than 13 inches manufactured in the United States or shipped in interstate commerce after July 1, 2007 be capable of receiving DTV signals over-the-air.<sup>24</sup> The *DTV Tuner Order* did not require television receivers that cannot receive over-the-air digital broadcast signals to carry a label informing consumers of this limitation, but the Commission committed to monitoring the marketplace and taking steps if necessary to protect consumers' interests.<sup>25</sup>

8. In 2005, the Commission revised the timing and scope of the DTV tuner phase-in to ensure that all television receivers, including televisions with screens smaller than 13 inches and television reception devices such as VCRs, that are manufactured in the United States or shipped in interstate commerce after March 1, 2007, have the capability to tune and decode digital signals as broadcast over-the-air.<sup>26</sup> The Commission found that consumer awareness of whether television equipment can receive over-the-air DTV signals or only over-the-air analog signals is critical to ensuring that consumer expectations are met.<sup>27</sup> The Commission was hopeful that manufacturers and retailers would educate consumers about the digital transition by providing point-of-sale and other marketing information to consumers or clearly label new television equipment.<sup>28</sup>

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<sup>21</sup> CERC Comments at 9-10. See also CEA Reply at 17.

<sup>22</sup> CERC Comments at 10.

<sup>23</sup> See 47 C.F.R. § 15.117; *In the Matter of 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 (Aug. 9, 2002) ("*DTV Tuner Order*").

<sup>24</sup> *DTV Tuner Order*, 17 FCC Rcd at 15996, ¶ 40.

<sup>25</sup> *Id.* at 16004, ¶ 59.

<sup>26</sup> See *In the Matter of Requirements for Digital Television Receiving Capability*, Second Report and Order, 20 FCC Rcd. 18607 ("*DTV Tuner Second R&O*").

<sup>27</sup> *Id.* at 18617.

<sup>28</sup> *Id.* See also *Second DTV Periodic NPRM*, 18 FCC Rcd at 1315, ¶ 96 (noting that in the *DTV Tuner Order*, the Commission decided, with respect to labeling, "to monitor the state of the marketplace and take additional steps if necessary to protect consumers' interests.") citing *DTV Tuner Order*, 17 FCC Rcd at 15996, ¶ 40. We also note that in the past, the Commission has expressed concern about adequate disclosures in the analogous *Plug-and-Play Order*, which concluded that the public understanding of "cable ready" in the analog context includes the capability to receive signals over-the-air as well as from a cable system. See *Compatibility Between Cable Systems and Consumer Electronics Equipment*, 15 FCC Rcd 17568 (2000); Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices & Compatibility Between Cable Systems & Consumer Electronics Equipment ("*Plug-and-Play Order*"), 18 FCC Rcd 20885 (2003). The *Plug-and-Play Order* implemented a voluntary labeling regime jointly proposed by the consumer electronics ("CE") and cable industries to provide consumers with information pertaining to "digital cable ready" equipment. See *Plug-and-Play* (continued....)

### III. DISCUSSION

#### A. Labeling is Needed for Analog-Only Televisions

9. The NPRM solicited comment on proposals for requiring disclosure of information to consumers concerning analog and digital television equipment. We conclude that it is necessary for us to require disclosure of the limitations of analog-only television receiving equipment at the point of sale.<sup>29</sup> Therefore, we are adopting a rule to alert consumers that after February 17, 2009, analog-only television equipment will not be able to receive over-the-air television signals unless it is connected to a digital-to-analog converter or a digital subscription service. This will ensure that consumers have the necessary information at the point of purchase to decide if they wish to buy a television that has only an analog tuner. We also conclude that it is not necessary for us to mandate labeling for digital television equipment at this time in light of recent voluntary actions and the increasing availability of information about DTV features and terminology.<sup>30</sup> For example, CEA and several members of CERC co-sponsored a consumer “tip sheet,” “Buying a Digital Television” with the Commission.<sup>31</sup> This tip sheet is available on several websites<sup>32</sup> and has been distributed at consumer events and industry conventions.

10. In contrast to the information available concerning digital televisions, the record evidence indicates that the consumer electronics industry efforts do not adequately inform consumers how analog-only television equipment purchased now will function when the

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Order, 18 FCC Rcd at 20899-901, ¶¶31-32, 34 (2003) (includes a requirement to provide certain information to consumers in materials available after sale). This requirement, by definition, applies only to digital televisions and does not apply to analog-only televisions.

<sup>29</sup> By “point of sale” we mean the place where televisions are displayed for consumers prior to purchase. The required label language should be prominently displayed in a manner that is clearly visible to the consumer and associated with the analog-only television model(s) to which it pertains.

<sup>30</sup> *Accord* Thomson Reply at 8-9. *See also* DTV Tuner Order 17 FCC Rcd at 16004 ¶ 59. We have found many examples of improved information about digital equipment, both in the record in this docket and in recent Internet searches. For example, Thomson asserted that it is important to use the same nomenclature and definitions industry-wide. Thomson Reply at 8 (e.g., “HDTV Sets” means “devices with HDTV displays and integrated DTV receivers” and “HDTV Monitors” means devices that require a separate receiver). CEA has developed uniform nomenclature that appears in its Consumer Guide to HDTV. *See Ex parte Comments of the Consumer Electronics Association*, in this docket (dated Dec. 23, 2003) (“CEA *ex parte* 2003”). *See* “A Consumer’s Guide to the Wonderful World of HDTV” contained in CEA *ex parte* 2003. *See also* <http://www.ce.org/PDF/DTVWhitePaperV2FINAL.pdf>. Although this nomenclature has not been universally or uniformly adopted, we believe that industry members are providing helpful explanations to their customers. *See, e.g.,* <http://www.bestbuy.com/site/olspage.jsp;jsessionid=IP5YY3BRGRNYPKC4D3NFAHI?skuId=7661933&type=product&productCategoryId=pcmcat95100050013&id=1134701298432> (describing an Insignia 15” widescreen LCD EDTV monitor as capable of displaying signals from an optional digital source and defining ED-ready as “displaying high-definition digital content at reduced resolution”) (visited Feb. 14, 2007). Circuit City and Wal-Mart also offer general advice about digital TV. *See* <http://www.circuitcity.com/ccd/genericContent.do?oid=164117> (“HDTV Defined”) (visited Feb. 14, 2007); <http://www.walmart.com/catalog/catalog.gsp?cat=534563> (“HDTV Buying Guide”) (visited Apr. 4, 2007).

<sup>31</sup> *See* <http://www.dtv.gov/dtvtipsheet.pdf>.

<sup>32</sup> *See, e.g.,* [http://www.ce.org/shared\\_files/resources/HDTV\\_bucksip.pdf](http://www.ce.org/shared_files/resources/HDTV_bucksip.pdf) (visited Feb. 14, 2007); [http://www.narda.com/files/public/CERC\\_DTV\\_Tip\\_Sheet.pdf](http://www.narda.com/files/public/CERC_DTV_Tip_Sheet.pdf) (visited Feb. 14, 2007).

transition ends.<sup>33</sup> CEA submitted an *ex parte* filing in October 2006, listing the steps it or its members have taken to improve consumer awareness of the transition in general and to provide information related to the purchase of television equipment in particular.<sup>34</sup> The letter describes the efforts of CEA and its manufacturing and retail members to provide comprehensive information about the digital transition via the Internet.<sup>35</sup> The letter also describes a voluntary labeling program announced in March 2006, intended to begin in July 2006.<sup>36</sup> Unfortunately, it appears that neither manufacturers nor retailers have implemented this voluntary program on a widespread basis.

11. Therefore, we remain concerned that the continued sale of analog-only television equipment without appropriate disclosure is likely to mislead consumers who are unaware of the upcoming transition. Such consumer confusion is inconsistent with a smooth transition to digital broadcasting. Further, we do not believe we can rely solely on consumer assistance voluntarily given at the retail outlet to address such confusion. There have been reports that retail sales clerks are often confused or unaware of the limitations of analog-only televisions.<sup>37</sup> In addition, many consumers will want to shop for television equipment at discount stores or online, where sales help is less likely to be available to explain analog-only limitations.<sup>38</sup> Thus, confused consumers are often unable to obtain reliable and accurate information about the basic capabilities of television equipment at the point of sale.

12. The government has a strong interest in ensuring a timely conclusion of the digital transition, reducing consumer disruption and confusion, and limiting the number of consumers who are left without over-the-air television service on some or all of their television equipment when the analog broadcast service ends in less than two years. Accurate communication of this

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<sup>33</sup> See, e.g., CERC Comments at 10 (after analog broadcasting ends, analog sets can receive digital signals using “cable, satellite RF, S-VHS, component video, and composite video interfaces; via standalone converters to the same interfaces; potentially over the Internet”). See also CEA *ex parte*, supra note 30, at 6. Retailers argue that they know how to package products for consumers and already offer digital converters, for which “immense competitive” markets will exist due to the *Plug-and-Play* and *DTV Tuner Orders*. They say they will merchandise these converters with analog televisions already owned by consumers as well as the analog sets they continue to sell. CERC Comments at 10. We believe, however, that retailers also have an incentive to sell all of their analog-only televisions remaining in inventory and that the tension between these two conflicting goals may lead to results that are not conducive to achievement of the goal of a successful DTV transition through the satisfaction of consumer expectations.

<sup>34</sup> See *Ex parte Letter of the Consumer Electronics Association*, MB Docket No. 03-15 (dated Oct. 31, 2006) (“CEA *ex parte* 2006”).

<sup>35</sup> See, e.g., [www.ceknowhow.com](http://www.ceknowhow.com)

<sup>36</sup> CEA *ex parte* 2006, supra note 34, at 2. The voluntary notice would say:

Notice: This TV has only an “analog” broadcast tuner so will require a converter box after February 17, 2009 to receive over-the-air broadcasts with an antenna, because of the nation’s transition to digital broadcasting on that date, as required by Federal law. (It should continue to work as before with cable and satellite TV systems, gaming consoles, VCRs, DVD players and similar products.)

<sup>37</sup> 2002 GAO Report at 18-19. We have no evidence that this situation has improved in the intervening years.

<sup>38</sup> See, e.g., <http://www.lcdtvbuyingguide.com/lcdtelevision/7buyinglcdtv.shtml> (advising that “big box” retailers are the ones with the best prices, the worst service and poorly qualified employees) (visited Feb. 14, 2007); <http://tv.about.com/od/learningcenter/a/onlinevsstoretv.htm/> (visited Feb. 14, 2007).

impending change is a highly material disclosure for consumers contemplating the purchase of a television. It is also a matter of public safety for consumers who rely on analog-only televisions to obtain critical information in an emergency.<sup>39</sup> After the transition, absent a label requirement, even cable and satellite subscribers might be surprised to find that they cannot receive television broadcasts over-the-air on an analog-only television purchased today if they choose to discontinue subscription service or their cable or satellite service is terminated by a disaster, service disruption or for non-payment of their bills.

13. Although the DTV Tuner requirement prohibits manufacture, import or interstate shipment of analog-only television equipment after March 1, 2007, it does not extend to retail sales of analog-only television equipment from inventory.<sup>40</sup> Thus, the passing of this date does not eliminate the need for disclosure by retailers who choose to continue to sell analog-only television equipment after March 1, 2007.<sup>41</sup> In fact, we are concerned that there is a greater likelihood of confusion if consumers assume that all televisions must have a digital tuner after this date. Without point of sale disclosure, consumers may inadvertently buy analog-only television equipment without understanding that such devices will require some additional equipment for use after analog broadcasting ends. We also believe that the presence of a label or sign concerning the sale of analog-only television equipment will serve an educational function by informing and reminding consumers of the upcoming transition from analog to digital broadcasting.

14. We had been reluctant to require specific labeling in the expectation that manufacturers and retailers would develop clear and uniform terminology to convey to consumers prior to purchase the

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<sup>39</sup> Analog-only televisions are currently sold as part of emergency equipment to provide information in a disaster without disclosure that in two years, they will not be able to receive television broadcasts. *See, e.g.*, The Weather Channel Weather Alert Radio, T.V. & Lantern, \$89.99, at Home Depot, [http://www.homedepot.com/prel80/HDUS/EN\\_US/diy\\_main/pg\\_diy.jsp?BV\\_SessionID=@@@@0545195810.1171033745@@@@&BV\\_EngineID=cchaddkedeggkmcgelceffdfgidgnk.0&CNTTYPE=PROD\\_META&CNTKEY=misc/searchResults.jsp&MID=9876&N=2984+6253&pos=n02](http://www.homedepot.com/prel80/HDUS/EN_US/diy_main/pg_diy.jsp?BV_SessionID=@@@@0545195810.1171033745@@@@&BV_EngineID=cchaddkedeggkmcgelceffdfgidgnk.0&CNTTYPE=PROD_META&CNTKEY=misc/searchResults.jsp&MID=9876&N=2984+6253&pos=n02) (visited Feb. 11, 2007).

<sup>40</sup> *See* 47 C.F.R. §§ 15.117(a) (requiring all TV broadcast receivers shipped in interstate commerce or imported into the United States for sale or resale to the public to have the capability to tune and decode over-the-air DTV signals on all channels allocated for broadcast television service) and 15.117(i)(1)(iii),(iv) (requiring that 100 percent of television receivers and 100 percent of other video devices (videocassette recorders (VCRs), digital video recorders such as hard drive and DVD recorders, etc.) that receive television signals must include DTV tuners effective March 1, 2007).

<sup>41</sup> *Id.* and *see* discussion of DTV tuner requirement in paragraph 7, *supra*. We note that some retailers continue to offer analog-only televisions after March 1, 2007. *See, e.g.*, [http://www.walmart.com/catalog/product.do?product\\_id=3757013](http://www.walmart.com/catalog/product.do?product_id=3757013) (offering a 24-inch Magnavox analog-only set, which specifies “SD (Standard Definition)” as a key feature and benefit and offers a two-year extended service plan, without disclosing that in two years this “SD” set will no longer receive over-the-air TV broadcasts) (visited Feb. 11, 2007); <http://www.circuitcity.com/ssm/Specifications-of-Sony-20-TV-KV-20FS120/sem/rpsm/oid/91707/rpem/ccd/productDetailSpecification.do#tabs> (offering a Sony 20" FD Trinitron WEGA Flat-Screen TV, (KV-20FS120) for \$239.99) (visited Apr. 2, 2007); [http://www.walmart.com/catalog/product.do?product\\_id=2606915#Specifications](http://www.walmart.com/catalog/product.do?product_id=2606915#Specifications) (offering a Sanyo 20" LCD TV, CLT2054, \$297 (EDTV monitor but NTSC tuner)) (visited Apr. 2, 2007); <http://www.bestbuy.com/site/olspage.jsp?skuId=8188301&type=product&productCategoryId=pcmcat95100050013&id=1164156729067> (offering a Panasonic Triple Play 20" TV/DVD/VCR Combo Model: PV-DF2036M, \$299.99, that appears to be analog-only) (visited Apr. 2, 2007).

features as well as the limitations of television products.<sup>42</sup> However, we now conclude that adequate pre-sale information concerning analog-only television equipment will not be provided voluntarily, and the establishment of a date certain raises the stakes for this continuing failure to disclose. We also recognize that it is currently illegal for any manufacturer to make, import or ship an analog-only television set or other video device with only an analog receiver.<sup>43</sup> The focus now shifts to retailers that are selling such analog-only equipment from pre-March 1, 2007 inventory. We, therefore, require that anyone that sells or offers for sale or rent television receiving equipment that does not contain a DTV tuner after March 1, 2007 must display the following consumer alert, in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label, at the point of sale.<sup>44</sup> This consumer alert either must be printed on a transparent material and affixed to the screen, in a manner that is removable by the consumer and does not obscure the picture when displayed for sale, or displayed separately immediately adjacent to each television offered for sale and clearly associated with the analog-only television model to which it pertains. In the case of other analog-only video devices that do not include a display (e.g., a VCR), the consumer alert must be in a prominent location on the device, such as on the top or front, or displayed separately immediately adjacent to and clearly associated with the analog-only model to which it pertains. In addition, to the extent that any persons display or offer for sale or rent via direct mail, catalog, or electronic means (e.g., the Internet) analog-only television receiving equipment after March 1, 2007, they must prominently display as part of all advertisements or descriptions of such television receiving equipment, in clear and conspicuous print, and in close proximity to any images or descriptions of such equipment, the following text.

#### **CONSUMER ALERT**

This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1-888-835-5322) or visit the Commission's digital television website at: [www.dtv.gov](http://www.dtv.gov).

#### **B. Authority to Require Labeling**

15. We conclude that we have ancillary authority to adopt point of sale disclosure requirements for analog-only television equipment under Titles I and III of the Communications

<sup>42</sup> See *DTV Tuner Second R & O*, 20 FCC Rcd at 18617.

<sup>43</sup> See *supra*, paragraph 13.

<sup>44</sup> See 47 C.F.R. § 15.117(k), as amended, in Appendix B. We note that this disclosure language generally tracks the text contained in HR 608, introduced by Representative Joe Barton in January 2007. See Digital Television Consumer Education Act of 2007, H.R. 608, 110th Cong. § 2 (2007). The language is modified to include television receiving devices such as analog-only VCRs of the type covered by the Commission's DTV Tuner mandate. 47 C.F.R. § 15.117(i)(1)(iv).

Act of 1934, as amended (“Act”).<sup>45</sup> Courts have long recognized that, even in the absence of explicit statutory authority, the Commission has authority to promulgate regulations to effectuate the goals and provisions of the Act if the regulations are “reasonably ancillary to the effective performance of the Commission’s various responsibilities” under the Act.<sup>46</sup> The Supreme Court has established a two-part ancillary jurisdiction test: (1) the subject of the regulation must be covered by the Commission’s general grant of jurisdiction under Title I of the Communications Act; and (2) the regulation must be reasonably ancillary to the Commission’s statutory responsibilities.<sup>47</sup> The requirements we adopt here regulate devices that fall within the Commission’s Title I jurisdiction, advance our statutory obligation to promote the accessibility and universality of radio communication, and serve the public interest. We conclude, therefore, that we have ancillary jurisdiction to adopt point of sale disclosure requirements in this proceeding.

16. Title I authorizes the Commission to regulate devices that receive broadcast communications. Sections 1 and 2(a) of the Act confer on the Commission regulatory jurisdiction over all interstate radio and wire communication.<sup>48</sup> Broadcasting is interstate in nature, and television receivers are covered by the Act’s definition of “radio communication,” which includes not only the “transmission of . . . writing, signs, signals, pictures, and sounds” by aid of radio, but also “all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.”<sup>49</sup> Television receivers are “apparatus” “incidental to . . . transmission” of television broadcasts and, therefore, are within the scope of our Title I subject matter jurisdiction.<sup>50</sup>

17. The recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in *American Library Ass’n v. FCC* is not to the contrary. The D.C. Circuit held in that case that the Commission lacked jurisdiction over devices that can be used for receipt of wire or radio communications when those devices are *not* engaged in the process of radio or wire transmission.<sup>51</sup> Thus, the D.C. Circuit held that the Commission lacked jurisdiction to regulate

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<sup>45</sup> 47 U.S.C. §§ 151, 152(a), 154(i), 154(o), 301, 303(r), 303(s), 336. The NPRM sought comment on the basis for the Commission’s authority to adopt labeling requirements. *Second DTV Periodic NPRM*, 18 FCC Rcd at 1315, ¶ 98.

<sup>46</sup> *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (upholding Commission regulation of cable television systems as a valid exercise of ancillary jurisdiction). See also *Rural Tel. Coalition v. FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988) (upholding Commission authority to establish a “Universal Service Fund” in the absence of specific statutory authority as ancillary to FCC responsibilities under sections 1 and 4(i) of the Act); *GTE Serv. Corp. v. FCC*, 474 F.2d 724, 731 (2d Cir. 1973) (“even absent explicit reference in the statute, the expansive power of the Commission in the electronic communications field includes the jurisdictional authority to regulate carrier activities in an area as intimately related to the communications industry as that of computer services, where such activities may substantially affect the efficient provision of reasonably priced communications service”).

<sup>47</sup> See *American Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005) (“*ALA*”).

<sup>48</sup> *Id.* at §§ 151, 152(a).

<sup>49</sup> *Id.* at § 153(33) (defining “radio communication”).

<sup>50</sup> *Id.*

<sup>51</sup> *ALA*, 406 F.3d at 703.

the post-transmission copying of program content. The requirement we adopt here, by contrast, does not involve post-transmission conduct. Rather, it directly concerns the ability (or inability) of television equipment to receive broadcast transmissions. As a result, the subject of the regulation is covered by Title I of the Act.<sup>52</sup>

18. In addition, we conclude that imposing point of sale disclosure requirements for analog-only television equipment is reasonably ancillary to our statutory obligations under the Act. The Commission was established to regulate interstate and foreign communications for the purposes of promoting the accessibility and universality of wire and radio communication, as well as promoting public safety through the use of wire and radio communication.<sup>53</sup> The Commission also is statutorily obligated to promote the orderly transition to digital television, “a critical step in the evolution of broadcast television.”<sup>54</sup> The Commission has carried out this mandate, among other things, through implementation of the All Channel Receiver Act, which authorizes it “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.”<sup>55</sup> Further, the Commission is authorized to “make such rules and regulations . . . as may be necessary in the execution of its functions,” and to “[m]ake such rules and regulations . . . not inconsistent with law, as may be necessary to carry out the provisions of this Act . . .”<sup>56</sup>

19. The rules we adopt today advance these statutory mandates and serve the public interest. Accurate and timely communication of the impending change from analog to digital

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<sup>52</sup> *See id.* at 692 (“The Commission’s general jurisdictional grant under Title I plainly encompasses the regulation of apparatus that can receive television broadcast content, but only while those apparatus are engaged in the process of receiving a television broadcast.”).

<sup>53</sup> 47 U.S.C. § 151. *See Motion Picture Ass’n of America, Inc. v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) (“*MPAA*”) (“Under § 1, Congress delegated authority to the FCC to expand radio and wire transmissions, so that they would be available to all U.S. citizens.”). Our action here is consistent with the *MPAA* decision, which held that “where, as in this case, the FCC promulgates regulations that significantly implicate program content, § 1 is not a source of authority.” *Id.* at 799. The court explained that “§ 1’s mandate to serve ‘all the people of the United States’ is a reference to the geographic availability of service. . . . Section 1 does not address the *content* of the programs with respect to which accessibility is to be ensured.” *Id.* at 804 (citations omitted). Whereas the video description rules at issue in *MPAA* significantly implicated program content, *see id.* at 803 (explaining that the rules “require programmers to create a second script”), the labeling requirement here does not implicate program content at all. Thus, it is not outside the scope of Section 1 of the Act.

<sup>54</sup> 2002 *Biennial Regulatory Review*, 18 FCC Rcd 13620, 13825 (2003). *See, e.g.*, 47 U.S.C. §§ 336 note (requiring the Commission to assign paired digital television channels “to further promote the orderly transition to digital television”), 336(b) (expressing Congressional interest in the transition from analog to digital television and reading, in pertinent part, “[i]n prescribing the regulations required by subsection (a), the Commission shall . . . (5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.”).

<sup>55</sup> 47 U.S.C. § 303(s). *See Consumer Electronics Ass’n v. FCC*, 347 F.3d 291, 295 (D.C. Cir. 2003) (upholding phased-in digital tuner mandate that the FCC imposed in order to “provide the best means for rapidly providing consumers with the means to receive the DTV signals that are now being transmitted by broadcasters while minimizing the impact of this requirement on equipment manufacturers and consumers.”) (internal quotes and citations omitted). *See also* NBC/Telemundo Comments at 12 (stating that the authority to require labeling that discloses that equipment will not receive all available frequencies is implicit in the language of the All Channel Receiver Act (“ACRA”)) (citing 47 U.S.C. § 303(s)).

<sup>56</sup> *Id.* at §§ 154(i), 303(r).

transmission is a critical disclosure for consumers contemplating the purchase of television equipment. As discussed above, voluntary industry efforts to date have not been sufficient to ensure consumer awareness of the upcoming transition to digital television or of the limitations of analog-only televisions. Such consumer awareness is critical to our missions of promoting the accessibility and universality of radio communication, public safety, and an orderly digital transition.<sup>57</sup> Without such disclosure, many American consumers may purchase analog-only television equipment without knowing that these devices will be unable to receive over-the-air signals in fewer than two years without the purchase of additional equipment, may be unprepared for the digital transition when it arrives, and may be unable to obtain critical information in emergencies after the transition. Consumer awareness also is necessary to fulfill the Commission's mandate under the ACRA, for analog-only television equipment will be incapable of receiving all television broadcast frequencies after the digital transition. By requiring that consumers be informed at the point of sale that analog-only television equipment will not be able to receive over-the-air signals in 2009, the requirement we adopt today will ensure that consumers who purchase such analog-only equipment are aware of the transition, are able to prepare for it in advance, and are not cut off from broadcast communications in 2009.

20. Exercising ancillary jurisdiction to adopt point of sale disclosure requirements for analog-only television equipment is consistent with prior exercises of the Commission's authority. As noted above, the Commission previously relied on its authority under the ACRA to impose a phased-in digital tuner mandate in order to promote the orderly transition to digital television.<sup>58</sup> In addition, the Commission recently relied on its ancillary jurisdiction in requiring interconnected Voice over Internet Protocol (VoIP) service providers to distribute to their subscribers stickers or labels warning if E911 service may be limited or unavailable, and to instruct subscribers to place them on or near the equipment used in conjunction with the interconnected VoIP service.<sup>59</sup> The Commission also has numerous other labeling and disclosure requirements designed to further its statutory objectives and to protect consumers.<sup>60</sup> In sum, therefore, we conclude that we have ancillary authority to adopt point of sale disclosure requirements for analog-only television equipment.

#### IV. PROCEDURAL MATTERS

21. *Accessibility Information.* Accessible formats of this *Second Report and Order* (braille, large print, electronic files, audio format), are available to persons with disabilities by

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<sup>57</sup> See *Consumer Electronics Ass'n v. FCC*, 347 F.3d 291, 301-02 (D.C. Cir. 2003) (recognizing Congressionally mandated digital transition and Commission determination of consumer expectations that "the television they purchase . . . be able to receive over-the-air broadcast signals," and approving resulting Commission action to mandate DTV tuner phase-in).

<sup>58</sup> See *Consumer Electronics Ass'n v. FCC*, 347 F.3d at 295.

<sup>59</sup> *IP-Enabled Services*, 20 FCC Rcd 10245, 10271 ¶ 48 (2005).

<sup>60</sup> See, e.g., *2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885 (2003) (adopting technical, labeling and encoding rules to permit television sets to be built with "plug and play" functionality for one-way digital cable services); *Truth-in-Billing and Billing Format*, 20 FCC Rcd 6448 (2005) (mandating that billing practices, including line items, be truthful and non-misleading), *vacated on other grounds, NASUCA v. FCC*, 457 F.3d 1238 (11<sup>th</sup> Cir. 2006); 47 C.F.R. § 20.19 (labeling requirements for hearing-aid compatible mobile handsets).

sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

22. *Paperwork Reduction Act of 1995 Analysis. Paperwork Reduction Act Analysis.* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission will seek emergency approval from OMB for this information collection to expedite the approval of the information collection requirements. The Commission will publish a Federal Register Notice addressing the burdens contained in the information collection. At that time OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we have considered how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” We find that the new requirement must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the Order.

23. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,<sup>61</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this *Second Report and Order*. The FRFA is set forth in Appendix C.

24. *Congressional Review Act.* The Commission will send a copy of this *Second Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

## V. ORDERING CLAUSES

25. IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2(a), 3(33), 4(i), 303(r) and (s), and 336 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 152(a), 153(33), 154(i), 303(r) and (s), and 336, this Second Report and Order IS ADOPTED and the Commission's rules ARE HEREBY AMENDED as set forth in Appendix B. Rule section 47 C.F.R. § 15.117(k) contains information collection requirements subject to the PRA and is not effective until approved by the Office of Management and Budget. Accordingly, rule section 47 C.F.R. § 15.117(k) shall become effective May 25, 2007, subject to OMB approval for new information collection requirements. The Commission shall publish an announcement of OMB approval in the Federal Register. We find good cause for the rule to be effective by this date because the Order is necessary to minimize harm to consumers.<sup>62</sup>

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<sup>61</sup> See 5 U.S.C. § 604.

<sup>62</sup> See 5 U.S.C. § 553(d)(3) (“The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except ... as otherwise provided by the agency for good cause found and published with the rule.”). See also 47 C.F.R. §§ 1.103(a), 1.427(b). As described in this Order, the Commission has found that retailers are continuing to sell analog-only television receivers without disclosure of the limitations of this equipment after the digital television transition on February 17, 2009. Consumers buying these television receivers may not realize until after the end of the transition that they will no longer receive over-the-air signals without attachment to a converter or subscription service, may be unprepared for the digital transition when it arrives, and may be unable to obtain critical information in emergencies after the transition. In such instances, consumers would be financially harmed and deprived of service at a critical time. We are concerned that delay in the effective (continued....)

26. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

27. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Second Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

(Continued from previous page) \_\_\_\_\_  
date of the disclosure requirement will result in additional analog-only equipment being sold to uninformed consumers due to the absence of appropriate disclosure, thereby harming consumers and undermining the goal of the rule. Parties subject to the rule will have a reasonable opportunity to comply with it, particularly in light of the fact that it will not be effective until OMB approval. Because delay can result in such harms to consumers and because affected parties will be afforded a reasonable opportunity to comply with the rule, we find that there is good cause to expedite the effective date of this rule. We are also requesting emergency PRA approval from OMB.

**APPENDIX A**  
**LIST OF MAJOR COMMENTERS<sup>1</sup>**

**Comments**

1. Aloha Partners, L.P.
2. Association for Maximum Service Television/National Association of Broadcasters (MSTV/NAB)
3. Association of Public-Safety Communications Officials-International, Inc.
4. Association of Public Television Stations, The Corporation for Public Broadcasting and The Public Broadcasting Service (Public Television)
5. BELO Corp.
6. Block Communications, Inc.
7. Ronald J. Brey
8. Capitol Broadcasting Company, Inc.
9. Cavalier Group, LLC (Withdrawn)
10. Civil Rights Organizations (Minority Media and Telecommunications Council)
11. Consumer Electronics Association (CEA)
12. Consumer Electronics Retailers Coalition (CERC)
13. Consumer Federation of America (CFA)
14. CPB/WGBH National Center for Accessible Media (NCAM)
15. Crown Castle USA, Inc.
16. Harbor Wireless, LLC
17. Julie M. Kelley
18. KM Communications, Inc., et al.
19. LeSEA Broadcasting Corporation
20. Media General Communications, Inc.
21. Motorola, Inc.
22. National Broadcasting Company, Inc. (NBC) and Telemundo Group, Inc.
23. National Cable & Telecommunications Association (NCTA)
24. National Minority T.V., Inc.
25. Paxson Communications Corporation
26. Public Safety Wireless Network Program
27. Sinclair Broadcast Group, Inc.
28. Thomas Smith
29. Statewide Wireless Network, New York State, Office for Technology, State Capitol, ESP
30. Thomson Inc.
31. WDLP Broadcasting Co., LLC
32. WHYY, Inc.

**Reply Comments**

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<sup>1</sup> A complete list of commenters can be found via the Commission's Electronic Comment Filing System, at [http://gulfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch\\_v2.hts](http://gulfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts).

1. Association for Maximum Service Television/National Association of Broadcasters
2. Cavalier Group, LLC
3. Children's Media Policy Coalition
4. Consumer Electronics Association (CEA)
5. Consumer Federation of America (CFA)
6. MTC North, Inc.
7. National Cable & Telecommunications Association
8. National Public Safety Telecommunications Council
9. Paxson Communications Corporation
10. Public Safety Wireless Network Program
11. Rural 700 MHz Band Licensees
12. Thomson, Inc.

**APPENDIX B**  
**FINAL RULE**

PART 15--RADIO FREQUENCY DEVICES

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Section 15.117, is amended by adding subsection (k) to read as follows:

§ 15.117 TV broadcast receivers.

\* \* \* \* \*

(k) The following requirements apply to all responsible parties, as defined in §2.909 of this chapter, and any person that displays or offers for sale or rent television receiving equipment that is not capable of receiving, decoding and tuning digital signals.

(1) Such parties and persons shall place conspicuously and in close proximity to such television broadcast receivers a sign containing, in clear and conspicuous print, the Consumer Alert disclosure text required by subparagraph (3). The text should be in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label. The information may be printed on a transparent material and affixed to the screen, if the receiver includes a display, in a manner that is removable by the consumer and does not obscure the picture, or, if the receiver does not include a display, in a prominent location on the device, such as on the top or front of the device, when displayed for sale, or the information in this format may be displayed separately immediately adjacent to each television broadcast receiver offered for sale and clearly associated with the analog-only model to which it pertains.

(2) If such parties and persons display or offer for sale or rent such television broadcast receivers via direct mail, catalog, or electronic means, they shall prominently display in close proximity to the images or descriptions of such television broadcast receivers, in clear and conspicuous print, the Consumer Alert disclosure text required by subparagraph (3). The text should be in a size large enough to be clear, conspicuous, and readily legible, consistent with the dimensions of the advertisement or description.

(3) “CONSUMER ALERT

This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation’s transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1-888-835-5322) or visit the Commission’s digital television website at: [www.dtv.gov](http://www.dtv.gov).”

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## APPENDIX C

## FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>1</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rule Making* (“NPRM”).<sup>2</sup> The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the *Second Report and Order*.**

2. The rule adopted in this *Second Report and Order* is required to ensure a smooth transition of the nation’s television system from analog to digital format. In an earlier proceeding in MM Docket No. 87-268, the Commission stated its intention to hold periodic reviews of the progress of the digital conversion and to make any adjustments necessary to our rules and policies to ensure that the introduction of digital television broadcasting, the end of analog broadcasting, and the recovery of spectrum at the end of the analog-to-digital transition would fully serve the public interest.<sup>4</sup>

3. This *Second Report and Order* focuses on whether labeling on digital television equipment is needed at the point of sale to provide consumers with information they need. The Commission rejects proposals to require that digital television equipment bear labels concerning performance standards or antenna capabilities and limitations. We require that consumers be informed that analog television sets will, after analog broadcasting ends, require additional equipment (such as a digital-to-analog converter) if they are to continue to receive television service. Accordingly, we require that retailers post a label or sign prior to purchase to inform consumers that analog television receivers will need additional equipment or attachment to a subscription service to continue to receive over-the-air television after analog broadcasting ends.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.**

4. One comment was received on the IRFA. That comment did not concern any subject addressed in this *Second Report and Order*. The comment was discussed in the Final Regulatory Flexibility Analysis (“FRFA”) issued as part of the Commission’s Report and Order (“*First Report and Order*”) in this proceeding (FCC 04-192, released September 7, 2004) and

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *Second Periodic DTV NPRM*, 18 FCC Rcd 1279, 1329 (2003).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> *Advanced Television Systems & Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809, 12856 (1997) *on recon.*, 13 FCC Rcd 6860, *on further recon.*, 14 FCC Rcd 1348 (1999), *recon. dismissed*, 14 FCC Rcd 11572, 15 FCC Rcd 4760 (2000).

was discussed in paragraphs 12-13 of the Final Regulatory Flexibility Analysis (“FRFA”) issued as part of the *First Report and Order*.

### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.

5. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government entity.”<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).<sup>8</sup>

6. The only entities directly affected by the decisions made and rules adopted in this *Second Report and Order* are retailers and other sellers of television equipment, and electronics equipment manufacturers.

7. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>9</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.<sup>10</sup> According to Census Bureau data for 2002, there were a total

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<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies, “unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such the term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>7</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>8</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation, and independence are sometime difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>9</sup> U.S. Census Bureau, 2002 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>10</sup> 13 C.F.R. § 121.201, NAICS code 334220.

of 1,041 establishments in this category that operated for the entire year.<sup>11</sup> Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.<sup>12</sup> Thus, under this size standard, the majority of firms can be considered small.

8. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: “This U.S. industry comprises: (1) establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.”<sup>13</sup> The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having \$8 million or less in annual receipts.<sup>14</sup> According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year.<sup>15</sup> Of this total, 10,080 firms had annual sales of under \$5 million, and 177 firms had sales of \$5 million or more but less than \$10 million.<sup>16</sup> Thus, the majority of firms in this category can be considered small.

9. *Electronic Shopping.* According to the Census Bureau, this economic census category “comprises establishments engaged in retailing all types of merchandise using the Internet.”<sup>17</sup> The SBA has developed a small business size standard for Electronic Shopping, which is: all such entities having \$23 million or less in annual receipts.<sup>18</sup> According to Census Bureau data for 2002, there were 4,959 firms in this category that operated for the entire year.<sup>19</sup>

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<sup>11</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>12</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

<sup>13</sup> U.S. Census Bureau, 2002 NAICS Definitions, “443112 Radio, Television, and Other Electronics Stores”; <http://www.census.gov/epcd/naics02/def/NDEF443.HTM>.

<sup>14</sup> 13 C.F.R. § 121.201, NAICS code 443112.

<sup>15</sup> U.S. Census Bureau, 2002 Economic Census, Industry Series: Retail Trade, Table 4, Sales Size of Firms for the United States: 2002, NAICS code 443112 (issued November 2005).

<sup>16</sup> *Id.* An additional 123 firms had annual sales of \$10 million or more. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts.

<sup>17</sup> U.S. Census Bureau, 2002 NAICS Definitions, “454111 Electronic Shopping”; <http://www.census.gov/epcd/naics02/def/NDEF454.HTM#N4541>.

<sup>18</sup> 13 C.F.R. § 121.201, NAICS code 454111.

<sup>19</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Retail Trade, Table 4, “Sales Size of Firms for the United States: 2002,” NAICS code 454111 (issued Nov. 2005); (continued...)

Of this total, 4,742 firms had annual sales of under \$10 million, and an additional 133 had sales of \$10 million to \$24,999,999.<sup>20</sup> Thus, the majority of firms in this category can be considered small.

**D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements.**

10. The *Second Report and Order* requires anyone who sells or offers for sale television receiving equipment that has an analog tuner but not a digital tuner to disclose at the point of sale that the television will not receive over-the-air television broadcast signals after February 17, 2009 unless it is attached to a digital-to-analog converter box or a cable or satellite subscription service receiver.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.**

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>21</sup>

12. The final decision made in the *Second Report and Order* is to require retailers to place a label or display a sign on or near analog-only television receiving devices (television sets, VCRs, etc.) that discloses the limitations for such equipment in the near future. This requirement applies alike to large and small sellers of television equipment who choose to sell analog-only televisions after March 1, 2007. Due to the phase-in of the DTV tuner requirement cited above, after March 1, 2007, manufacturers and distributors are prohibited from making, importing or shipping in interstate commerce a television set that has an analog tuner but not a digital tuner. This point of sale disclosure requirement ensures that if sellers want to sell analog-only television equipment from existing inventory, they must be sure consumers understand the limitations that will apply when full power analog broadcasting ceases on February 17, 2009. The Commission also considered, and rejected, proposals to require many more disclosures with respect to digital television equipment. The Commission rejected these proposals because, in its opinion, adequate information is being made available to consumers from their own activities, industry efforts, disclosures encouraged by the Commission, and actions by consumer protection authorities.

13. In conclusion, whatever burdens small entities may incur in complying with the decision made in the *Second Report and Order* are mitigated by the factors discussed in the

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<http://www.census.gov/prod/ec02/ec0244sssz.pdf>. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts.

<sup>20</sup> *Id.* An additional 84 firms had annual sales of \$25 million or more.

<sup>21</sup> 5 U.S.C. § 603(c)(1) to (4).

foregoing paragraphs. They are also warranted by the overall benefit to the public from accomplishing the transition from analog to digital television and reducing the consumer disruption related thereto. These benefits include better television; job creation; economic growth; stimulation of new technology in this country; and the shift of spectrum from television broadcasting to other uses such as new wireless services and public safety and homeland security applications.

**F. Report to Congress.**

14. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>22</sup> In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>23</sup>

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<sup>22</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>23</sup> See 5 U.S.C. § 604(b).

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*Re: Second Periodic Review of the Commission's Rules and Policies Affecting the  
Conversion to Digital Television (MB Docket No. 03-15)*

One of the Commission's most important responsibilities as the digital transition draws near is to make sure that consumers are aware of its approach. The Order we adopt today requires retailers to disclose to consumers that a television with only an analog tuner will not receive over-the-air broadcast signals after February 17, 2009. Such notice should ensure that consumers are making a fully informed decision about the television that they seek to purchase *before* bringing it home. It will also help educate consumers about the upcoming digital transition.

As of March 1, 2007, all television receivers manufactured or shipped in the United States must have a digital tuner that is capable of receiving digital broadcast signals. Nevertheless, retailers today have an existing inventory of televisions with only analog tuners that they hope to sell. Consumers may not know that the television on the store shelf today may not be capable of receiving broadcast signals in 2009. This is critical information that customers both need and deserve to know.

Through this and the other rulemaking items that we adopt today, the Commission is dedicated to minimizing the negative impact of the digital transition. Consumers have certain expectations and one of their expectations is that the television that they purchase today will also work two years from now. We will be vigilant in ensuring adherence to the rules we adopt today. The successful completion of the digital transition depends upon the government and industry working together in promoting consumer awareness and ensuring that consumers are not the ones bearing its costs.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Second Report and Order: Television Labeling Requirements (MB Docket No. 03-15)*

Labeling of analog-only television sets is a good idea. It would have been an even better idea had we adopted it fourteen months ago when Congress passed the February 2009 deadline. In just 2006, nearly 11 million analog sets were sold in the United States. Even with the tuner mandate now fully effective, 2.5 million more analog sets will be sold this year. Each of these sets is a ticking time bomb for 2009, requiring consumers to go to significant trouble and expense if they want to continue receiving over-the-air television.

How many of these consumers would have made a different choice if they had known of the switchover date? My guess is a lot. Given our phased-in tuner mandate, the analog-only sets sold since 2006 were among the smallest sets, including portable and battery-powered products that are often used primarily to receive off-air signals. Even for those sets intended to be connected to cable or satellite, the Commission has found that consumers expect the televisions they purchase will be able to receive over-the-air broadcast signals.<sup>1</sup> Indeed, meeting this consumer expectation was the reason the Commission required that every digital cable-ready set include an over-the-air digital tuner.<sup>2</sup>

We will likely have some surprised and unhappy consumers on our hands in 2009, asking why no one told them earlier about the end of analog broadcasting.

I think we should also have adopted a labeling requirement for sets without any over-the-air tuning capability (*i.e.*, “pure monitors”). Surprisingly, we don’t even know how many of these monitors are on the market. Given the Commission’s prior finding that “consumers will continue to expect that digital television receivers will be able to receive over-the-air digital broadcast signals,”<sup>3</sup> consumers ought to be notified if the equipment they are buying fails to meet that expectation.

I am not as sanguine as some that manufacturers and retailers are adequately informing consumers about the capabilities – or lack thereof – of their digital products. Go into any retail or online store and take a look around. You’ll find more alphabet soup than a Campbell’s warehouse. Does an LCD Flat-Panel TV have an over-the-air tuner? How about an EDTV Widescreen TV? Maybe an HDTV-Ready DLP? Hmmm, no way to tell from the name, so let’s say you know enough to go to the fine print. Suddenly you’re wading through information on lines of resolution, pixel counts, input jacks, viewing angles, response time, and on and on. But you persevere, and finally, if you’re lucky, you locate the entry for tuners, and it says

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<sup>1</sup> See, *e.g.*, *DTV Tuner Order*, 17 FCC Rcd 15978 (2002) at ¶ 44 (“[C]onsumers generally still expect the television they purchase to be able to receive over-the-air broadcast signals. The tuner requirement we adopt today is a mechanism for continuing to meet those expectations as broadcasting transitions from analog to digital.”).

<sup>2</sup> See *Plug-and-Play Order*, 18 FCC Rcd 20885 (2003) at ¶ 34.

<sup>3</sup> See *First DTV Periodic Review*, 16 FCC Rcd 5946 (2001) at ¶ 111. See also *DTV Tuner Order*, above.

“NTSC/ATSC/QAM.” You look around in total desperation for help, wondering why buying a TV suddenly got to be a test you had to cram for.

Some retailers are making an effort to cut through the jargon and I commend them for their efforts. But too many don't. A simple label would have leveled the playing field and given consumers the information they deserve.

Overall, I'm supportive of today's action. We could have gone farther and it's late in the day, but at least we're doing the right thing on the issue in front of us.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re:* Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 03-15)

I whole-heartedly support this *Order* mandating that anyone who chooses to sell devices, primarily televisions, with analog-only tuners must legibly and conspicuously display a consumer advisory label on or closely next to those devices, informing consumers they will no longer receive over-the-air broadcast signals without a converter box or other digital service after February 17, 2009. I have advocated for some time that the Commission require retailers to provide consumers with standardized information about the digital transition at points-of-sale. I am thrilled we are finally taking action on this. This is one step toward achieving my digital transition consumer education plan.

For the past decade, retailers and manufacturers have known about the impending transition. Unfortunately, their recent voluntary efforts to educate consumers about the transition have proven insufficient. Numerous studies have shown that the public is not aware that their analog TV sets are about to go dark. Meanwhile, the Commission has simply failed to step up our efforts until today.

I believe the Commission is uniquely suited, and indeed obligated, to address the paucity of information and lack of public awareness about the transition. Congress, in the All Channel Receiver Act, authorized the Commission to "make such rules and regulations" necessary to fulfill its obligation to promote the orderly transition to digital television, but we have yet to take significant action towards fulfilling this mandate. The Commission should encourage more public service announcements on analog and pay-television services, conduct more targeted outreach to insular communities, establish benchmarks for industry stakeholders, and impose public interest obligations on DTV broadcasters.

We can no longer rely solely on the websites, such as [www.dtv.gov](http://www.dtv.gov), to inform Americans about the transition. Not everyone has access to the Internet, and not everyone with Internet access will visit these educational websites. Local officials and organizations may be best positioned to conduct help reach these citizens. The Commission should hold regional seminars to train members of public interest organizations in local communities about the digital transition and how to get the word out to their communities. In addition, we should take advantage of the media ownership and localism holdings that we host to educate the American public about the approaching digital transition.

With 664 days left until transition, if the Commission and the National Telecommunications and Information Agency do not work closely together to develop a unified national message, a clear chain of command, and an effective consumer education plan, I fear that both agencies, as well as Congress and industry stakeholders, will witness a tsunami of consumer complaints.

Hence, while I very much support this *Order*, it is only one step in the right direction and much more needs to be done to prepare the American public for the dramatic finale on February 17, 2009.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Second Periodic Review of the Commission's Rules and Policies Affecting the  
Conversion to Digital Television, Second Report and Order (MB Docket No. 03-15)*

Most Americans are probably not thinking a lot about the end of the digital transition on February 17, 2009, but we are. The Commission's Rules now prohibit the manufacture, import, and interstate shipment of television sets that have only an analog tuner. Such sets will not receive over-the-air broadcast signals after the transition unless they are connected to a digital-to-analog converter box, and consumers need to know that. Because our Rules do not prohibit the sale of analog-only sets from pre-March 1, 2007, inventory, the common sense labeling requirement we adopt today should help to combat lingering consumer confusion concerning the basic capabilities of the television sets they buy today and move us a step closer to a smooth and seamless digital transition. This is not only good for consumers but also will be good for business as well.

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL**

*Re: Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 03-15)*

One of the biggest challenges the Commission faces over the next two years is moving our nation from analog to digital television with minimal consumer disruption. Consumer education about the transition to DTV has been limited so far. Those of us who have conducted informal polls of family and friends learn very quickly that consumers are often unaware of the transition from analog to digital broadcasting and of the specific deadline and are often confused about the products and features available for digital TV viewing. This Order takes a big step forward to educate consumers by requiring that retailers disclose, at the point of sale, that televisions that include only an analog tuner will not be able to receive over-the-air broadcast signals without a converter box after February 17, 2009. The disclosure requirements we adopt will ensure that consumers have this material information before they make a purchase.

I thank the Media Bureau for their work on this item. I thank the Chairman for his leadership and I support this Order.