

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

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

**REPORT AND ORDER
AND
FURTHER NOTICE OF PROPOSED RULEMAKING**

Adopted: June 9, 2005

Released: June 9, 2005

By the Commission: Commissioners Abernathy and Copps issuing separate statements.

Comments Date: [21 Days after Publication in the Federal Register]

Reply Comments Date: [35 Days after Publication in the Federal Register]

I. INTRODUCTION

1. By this action, the Commission is modifying the schedule by which new broadcast television receivers with screen sizes 25-36” are required to include the capability to receive over-the-air digital television (DTV) broadcast signals. This provision of the rules is an element of the Commission’s phase-in plan for requiring that all new broadcast television receivers include DTV reception capability.¹ The DTV reception requirement, which is also often termed the “DTV tuner requirement,” is being implemented by applying the requirement first to large screen receivers and then progressively to smaller screen units and other devices over a period of several years.² Our decision herein maintains the existing plan to require that 50 percent of 25-36” receivers that are imported or shipped in interstate commerce include DTV tuners beginning July 1, 2005, but modifies the date on which 100 percent of such receivers must include DTV tuners by advancing that date from July 1, 2006 to March 1, 2006. This action was initiated in response to a Petition for Rulemaking from the Consumer Electronics Association and the Consumer Electronics Retailers Association (CEA-CERC) requesting that we eliminate the 50 percent requirement for the 25-36” mid-size receivers and instead advance the date by which 100 percent of these receivers would include DTV tuners to March 1, 2006.³ While we understand CEA-CERC’s concern that the 50 percent requirement may have posed some difficulties for manufacturers and retailers, we nonetheless conclude that maintaining this approach for the mid-size 25-36” receivers prior to March 1, 2006 will most effectively ensure that DTV tuner equipped sets are available to consumers this year, and especially for the 2005 holiday and 2006 Super Bowl seasons. In this regard, we continue to believe that

¹ See 47 C.F.R. §§ 15.117(a), (h), and (i).

² DTV reception capability involves more circuitry than just a tuner. To provide this capability requires a tuner to receive the digital signal, an MPEG decoder/formatter, and associated processing capability and memory.

³ See Petition for Rulemaking filed by the Consumer Electronics Association and the Consumer Electronics Retailers Association on November 5, 2004.

it is essential that DTV reception capability be provided to consumers in new TV receivers as rapidly as possible in order to promote an expeditious completion of the transition from analog to digital broadcast television service. We also conclude that advancing the date by which all 25-36" receivers must include DTV reception capability to March 1, 2006 will serve to minimize any difficulties with the 50 percent provision at the earliest practicable date and will also serve to expedite the provision of DTV reception capability to consumers.

2. Consistent with our goal to provide DTV reception to consumers as rapidly as possible, we are also proposing to advance the date on which all new television receiving equipment must include the capability to receive over-the-air DTV broadcast signals from July 1, 2007 to a date no later than December 31, 2006. This revision would require all television receivers to include DTV tuners on a schedule not later than the statutory target date for the end of the DTV transition, when analog television service is to end. This proposal is intended to apply the DTV tuner requirement to all TV receivers on an advanced schedule that will allow a more rapid completion of the DTV transition while providing manufacturers with adequate time to include DTV tuners in all their TV products.

II. BACKGROUND

3. The DTV tuner requirement was adopted by the Commission in the *Second Report and Order and Second Memorandum Opinion and Order (DTV Review Second Report and Order)* in the DTV review proceeding.⁴ In that action, the Commission, *inter alia*, adopted rules requiring that all new TV broadcast receivers that are shipped in interstate commerce or imported into the United States, for sale or resale to the public, be capable of receiving the signals of DTV broadcast stations over-the-air no later than July 1, 2007.⁵ Under these rules, TV broadcast receivers are required only to provide useable picture and sound commensurate with their video and audio capabilities when receiving DTV signals. The DTV tuner requirement was intended to facilitate the transition to digital television by promoting the availability of DTV reception equipment and to protect consumers by ensuring that their TV receivers will provide off-the-air TV reception of digital signals just as they have provided off-the-air TV reception of analog signals.⁶ In order to minimize the impact of the DTV tuner requirement on both manufacturers and consumers, the Commission adopted a phase-in schedule that applies the requirement first to receivers with the largest screens and then to progressively smaller screen receivers and other TV receiving devices that do not include a viewing screen, *i.e.*, VCRs and DVDRs. This phase-in plan was intended to allow increasing economies of scale with production volume to be realized so that DTV tuner costs will be lower when they are required to be included in smaller sets and other TV receiving devices. The phase-in plan is currently as follows:

Receivers with screen sizes 36" and above -- 50% of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005;

⁴ See *Second Report and Order and Second Memorandum Opinion and Order* in MM Docket No. 00-39, 17 FCC Rcd 15978 (2002) at ¶¶ 8-46.

⁵ See *DTV Review Second Report and Order*, at ¶ 40. For purposes of these rules, TV broadcast receivers also include other devices such as TV interface devices that do not include a viewing screen, *e.g.*, devices that are intended to provide audio-video signals to a video monitor with an antenna or antenna terminals that can be used for off-the-air TV reception. However, in the case of receivers that have display capabilities, the DTV tuner requirement applies only to units that have screen sizes 13" or larger.

⁶ *Id.* at ¶ 44.

Receivers with screen sizes 25-36" -- 50% of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006;

Receivers with screen sizes 13-24" -- 100% of all such units must include DTV tuners effective July 1, 2007;

Other receiving Devices (videocassette recorders (VCRs), digital versatile disk (DVD) players/recorders, etc.) that receive broadcast television signals -- 100% of all such units must include DTV tuners effective July 1, 2007.

4. In their petition for rulemaking, CEA-CERC requested that we eliminate the July 1, 2005 requirement for 50 percent of TV receivers with screen sizes 25-36" to include DTV reception capability and instead advance from July 1, 2006 to March 1, 2006, the date for all such receivers to include a DTV tuner. CEA-CERC submitted that manufacturers' and retailers' experience with the 50 percent provision for 36" and larger receivers is that the 50 percent aspect of the phase-in plan is antithetical to the purpose of the DTV tuner requirement. They stated that, in practice, the 50 percent requirement has proven to be unduly disruptive in the marketplace in ways unforeseen and, in fact, threatens to slow, rather than speed, consumer migration to TV receivers with DTV tuners. They indicated that this is because the experience with 36" and larger sets is that consumers typically choose a lower-priced product with otherwise similar features except for the DTV tuner rather than a set with a DTV tuner. CEA-CERC argued that eliminating the 50 percent rule for 25-36" receivers and moving up the date for 100 percent compliance by such receivers would better align the policy behind the DTV tuner rule with market forces and consumer expectations.

5. In response to the CEA-CERC petition, we issued a *Notice of Proposed Rulemaking (Notice)* to consider adjusting the schedule by which new broadcast television receivers with screen sizes 25-36" are required to include the capability to receive digital television signals.⁷ In the *Notice*, we requested comment on whether there is need to revise the implementation schedule of the DTV tuner requirement for receivers with screen sizes 25-36" to address the concerns raised by CEA-CERC and, if so, how that schedule should be revised to achieve our goal that all new television receivers include DTV tuning capability by July 1, 2007. We specifically requested comment on the approach suggested by CEA-CERC whereby the requirement that 50 percent of receivers with screen sizes 25-36" incorporate a DTV tuner in the period from July 1, 2005 to July 1, 2006 would be eliminated and replaced with a new provision requiring that all receivers with screen sizes 25-36" be required to include a DTV tuner effective March 1, 2006. We also invited alternative approaches for addressing the market situation described in the CEA-CERC petition and indicated that we intend to consider the full range of options that are consistent with our stated goals. However, we also advised commenting parties that we do not intend to extend the July 1, 2007 date by which all broadcast television receivers include DTV reception capability. We received 22 comments and 7 reply comments in response to the *Notice*.⁸

III. DISCUSSION

6. DTV receivers are a necessary element of digital broadcast television service. Consumers must be equipped with the capability to receive digital TV signals for the transition to move forward to successful completion. As indicated above, the DTV tuner requirement is intended to provide DTV off-the-air reception capability to the general population on a schedule that will promote a rapid completion of the DTV transition while minimizing the potential for the costs of that capability to disrupt the

⁷ See *Notice of Proposed Rulemaking* in ET Docket No. 05-24, FCC 05-17, released February 14, 2005.

⁸ A list of the parties filing comments and reply comments is provided in Appendix A.

television receiver market. At the time we adopted the DTV tuner requirement, the 50 percent phase-in provisions of the DTV tuner requirement were intended as intermediate increases that would gradually apply the tuner requirement to greater proportions of receivers as manufacturers develop efficiencies in production, thus minimizing the impact of the tuner requirement on both manufacturers/importers and consumers.⁹ Our goal in this matter remains to maximize the number of TV receivers with DTV tuners on the market as quickly as possible.

A. Comments

7. Commenting parties representing the interests of consumer electronics manufacturers and retailers support revising the DTV tuner requirement for television receivers with screen sizes 25-36" in accordance with the approach requested in CEA-CERC's petition.¹⁰ These parties generally assert that their experience with the 50 percent requirement for large screen receivers was that this met with market responses by consumers and retailers that inhibited, rather than promoted, the rapid introduction of receivers equipped with DTV tuners. They argue that similar, and greater, disruptive responses will occur if the 50 percent requirement is allowed to go into effect for receivers in the popular mid-size 25-36" range. In statements generally expressive of the views of those supporting CEA-CERC's request, Panasonic, Philips, and Sharp submit that the 50 percent requirement for large screen receivers pushed retailers and consumers to stock and purchase TV sets without a digital tuner for two reasons. First, they state that retailers recognized that the less expensive sets without digital tuners would become scarce and difficult to obtain under the 50 percent requirement. Second, they state that the majority of consumers concluded that less expensive models without a DTV tuner would meet their needs since they receive programming delivered by cable or satellite. Panasonic, Philips, and Sharp state that because retailers were not under a mandate regarding what they may sell and are engaged in a highly competitive market, they ordered sets without tuners because such sets were most in demand.

8. Parties supporting CEA-CERC's request argue that the 50 percent provision of the implementation plan for DTV tuners presents a difficult situation for manufacturers to overcome, since they do not exercise control over retailers or the DTV market. They submit that given this scenario, only a 100 percent requirement can work to deploy DTV tuners in the popular mid-size receivers without disrupting the market and having a detrimental impact to the DTV transition timetable. They agree with CEA-CERC that eliminating the 50 percent requirement and accelerating the 100 percent requirement for 25-36" receivers would better align the Commission's rules with market forces and consumer expectations.¹¹ In this regard, Sharp states that eliminating the 50 percent step will allow television manufacturers to concentrate their manufacturing and marketing efforts on dual tuner sets and that no amount of labeling or point of purchase explanation will allow the message of the need for these sets to be delivered clearly in a 50 percent environment. Panasonic and Sharp state that generally consumer electronics manufacturers need 18 months to respond to technology mandates, but because they must already serve the market for dual tuner products they do not need additional time to meet the advanced

⁹ See *DTV Review Second Report and Order*, at ¶ 41.

¹⁰ Consumer electronics manufacturers and retailers that support CEA-CERC's proposal in this matter include Best Buy Co., Inc., Circuit City Stores, Inc., Dell, Inc., Hewlett-Packard Company, Panasonic Corporation of North America (Panasonic), Philips Electronics North America Corporation (Philips), RadioShack Corporation, Samsung Electronics Corporation (Samsung), SANYO Manufacturing Company (SANYO), SANYO Fisher Company (SANYO Fisher), Sharp Electronics Company (Sharp), Sony Electronics, Inc. (Sony), TTE Corporation (manufacturer of RCA television products), and Wal-Mart Stores. Harris Corporation, a manufacturer of broadcast station transmission equipment, also supports the CEA-CERC request.

¹¹ Philips states that it has plans to phase-out analog tuner-only sets in the 25-36" range during the coming fall and winter and to eliminate completely its analog-only tuner line in these sizes by March 1, 2006 if we adopt CEA-CERC's proposal.

100 percent date of March 1, 2006, proposed by CEA-CERC. Panasonic, Samsung and Sharp also submit that considering the various aspects of manufacturing, arranging for volume production, and timely delivery of products to retailers, advancing the date for 100 percent compliance of receivers in this size range any sooner than March 1, 2006 would not be realistic. Panasonic, Samsung, SANYO, SANYO Fisher, and Sony further state that we should not delay the July 1, 2007 date by which virtually all new broadcast TV receivers are required to have DTV tuners.

9. By contrast, broadcasters, consumers, and public safety interests oppose CEA-CERC's request.¹² In statements representative of parties opposing modification of the DTV tuner implementation plan for 25-36" receivers, MSTV/NAB and Disney argue that elimination of the 50 percent requirement scheduled to become effective for these receivers on July 1, 2005 would curtail consumers' access to and acceptance of digital TV receivers at a crucial point in the DTV transition. MSTV/NAB and Motorola state that while they do not disagree that phased implementation of a given size receiver may be inefficient, the number of sets that would become available to consumers while the 50 percent requirement is in effect would certainly be greater than if there were no mandate during that time. They state that broadcasters have invested millions of dollars per station to broadcast a digital signal but to a very limited number of over-the-air digital receivers,¹³ while consumer electronics manufacturers continue to sell approximately 20 million analog television receivers each year.¹⁴ MSTV/NAB also argue that the 25-36" screen size receiver category is critical to achieving mass market DTV acceptance.¹⁵ They argue that eliminating the 50 percent requirement as requested by CEA-CERC would essentially guarantee that DTV sets in the 25-36" size range do not reach consumers between July 1, 2005 and whatever date is set for the 100 percent requirement. In their reply comments, MSTV/NAB further express concern that if the 50 percent requirement is eliminated, retailers will increase their orders for analog-only mid-size TV sets to have inventory for sale even after the deadline for 100 percent of such sets to have a DTV tuner.

10. Chris Llana, MSTV/NAB, and Motorola argue that American consumers need access to DTV receivers if the DTV transition is to succeed. APTS is similarly concerned that consumers are being encouraged to buy DTV monitors that do not have tuners and that this violates the spirit and intent of the DTV tuner requirements. MSTV/NAB state that if DTV-capable sets are readily available, consumers will purchase such sets in the normal course of replacing their analog sets so that DTV penetration levels will naturally increase. MSTV/NAB argue that every analog set sold to a consumer necessarily decreases the likelihood that a given television market will soon reach the 85 percent statutory threshold for ending the transition.¹⁶ Chris Llana makes that point that every analog TV set sold is a blow to the DTV

¹² Those opposing elimination of the 50 percent requirement include: the Association for Maximum Service Television and the National Association of Broadcasters, in joint comments (MSTV/NAB), Association of Public Television Stations (APTS), Mariano-Florentine Cuellar, Chris Llana, Motorola, Inc., Pappas Telecasting Companies (Pappas), and the Walt Disney Company (Disney).

¹³ MSTV/NAB observe that the Commission recently reported that 1,497 of the 1,697 U.S. television stations with a DTV construction permit or license are broadcasting a digital signal with the result that off-the-air DTV service is available in virtually every corner of the country. They cite the Commission's report "Summary of DTV Applications Filed and DTV Build Out Status, April 7, 2005," which is available at <http://www.fcc.gov/mb/video/files/dtvsum.html> (April 12, 2005).

¹⁴ MSTV/NAB cite the Commission's report "Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers," MB Docket No. 04-210, at para. 21.

¹⁵ MSTV/NAB note CEA's comments in MB Docket No. 00-39 stating that in 1999, of TV sets with screen sizes larger than 20", over 90 percent had displays 25, 26, or 27" (CEA's comments in MB Docket No. 00-39 (filed April 6, 2001), at 10, n.15). They further observe that a 2004 study by Knowledge Networks/SRI found that in 54 percent of U.S. homes, the largest TV set is between 25-35" (Knowledge Networks/SRI's "Home Technology Monitor, 2004 Ownership Survey," (Spring 2004)).

¹⁶ See 47 U.S.C. § 309(j)(14)(B)(iii).

transition. MSTV/NAB contend that delay in providing DTV equipped receivers to consumers is even less acceptable given that Congress the Executive Branch, and the Commission have all recently made statements that bringing the DTV transition to a successful conclusion is a high priority.¹⁷ Motorola submits that implementing the CEA-CERC proposal could delay the full availability of the 700 MHz spectrum occupied by channels 52-69 for public safety and commercial services. In reply comments, the National Public Safety Telecommunications Commission (NPSTC) states that given the importance of the 700 MHz spectrum for public safety and the already lengthy delay in the DTV transition, the Commission should take all actions possible to advance the DTV transition and availability of the 700 band public safety spectrum.

11. MSTV/NAB and NPSTC submit that the best solution would be for the Commission to make the 100 percent requirement effective July 2005.¹⁸ MSTV/NAB, Disney, and Motorola state that if we decide to eliminate the 50 percent requirement, we should advance the 100 percent requirement to coincide with the late 2005/early 2006 holiday and Super Bowl selling seasons.¹⁹ MSTV/NAB note that the Commission has recognized that 40 percent of all television receivers are sold in the holiday shopping season and state that consumers looking to the 2005 holiday and Super Bowl selling season to purchase a TV set would be faced with the same analog sets now available and would not likely again purchase a new television in the next year or two, thus frustrating the transition.²⁰ Motorola submits that if we determine that eliminating the 50 percent requirement for 25-36" sets is in the public interest, it recommends that instead of advancing the date by only four months to March 1, 2006, we advance the benchmark eight months to November 1, 2005. It states that this approach would ensure that the penetration of DTV tuner equipped TV sets remains consistent with the Commission's original tuner implementation schedule. Motorola believes that moving the 100 percent compliance date to November 1, 2005 would be attainable by television manufacturers. It observes that manufacturers have been including DTV tuners since at least July 1, 2004. Pappas recommends that we move forward the full compliance date for 25-36" sets to no later than December 1, 2005. Mariano-Florentino Cuellar requests that we consider poor Americans who cannot initially afford digital tuners and that we craft this regulation in a way that will make it gradually more affordable for poor Americans.

12. Chris Llana and Harris state that in considering this matter, we should note that retailers are the most important interface with consumers and thereby should have a unique obligation to ensure that consumers are aware of the DTV transition and the ramifications it will have on their choice of television receivers. They argue that retailers should do a better job of educating their staff to support the education of consumers about the DTV transition and that they should be required to showcase and distribute CEA literature on the DTV transition in key areas within stores.

13. Chris Llana, Motorola and Pappas also argue that the date for implementation of DTV tuners in all size TV receivers should be advanced. Chris Llana and Pappas state that the date for final implementation should be changed from July 1, 2007 to December 31, 2006 to coincide with the statutory

¹⁷ MSTV/NAB note for example, that Congressman Barton has stated his intention to ask the Commission to accelerate the deadline for final implementation of the DTV tuner mandate to July 1, 2006, rather than July 1, 2007, as currently scheduled, *see* "Barton Wants to Move Up the DTV Tuner Deadlines," *Communications Daily*, April 13, 2005.

¹⁸ MSTV/NAB observe that the innovations of some manufacturers have achieved production efficiencies ahead of the schedule in the rules and point out that RCA has announced a 27" set, to be available this summer, that will sell for less than \$300.

¹⁹ NPSTC urges that we maintain the 50 percent requirement for 25-36" receivers effective July 1, 2005 and also advance the date for the 100 requirement for these receivers to earlier than March 1, 2006.

²⁰ *See Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809, 12841 (1997).

target date for the end of the transition and cessation of analog broadcasts.²¹ Pappas states that this change in the context of the current rulemaking would permit manufacturers to alter their production schedules far in advance of the amount of time that they prefer (18 months) and to more closely conform equipment sales schedules to the DTV construction schedules imposed on broadcasters. Motorola believes that we should move the date for requiring all TV sets 13” and larger to November 1, 2006, two months prior to the target transition end date. Motorola argues that allowing manufacturers to continue to sell non-DTV equipped sets of any size after December 31, 2006 is contrary to the statutory framework. In its reply comments, NPSTC also supports advancing the date by which 100 percent of such receivers must include DTV tuners to earlier than March 1, 2006, arguing that allowing TV sets without a DTV tuner to enter the market after the targeted conclusion of the DTV transition would be inconsistent with policies to speed that transition and recovery of 700 MHz spectrum.

14. In separate reply comments, CEA and CERC generally state that the supporters of their proposal accurately express current realities and that modifying the rules as recommended in their petition would be the appropriate solution to the marketplace disruption caused by the 50 percent requirement. CEA submits that the 50 percent rule does not work because manufacturers have no control over what television sets retailers will purchase and that retailers ultimately must respond to consumer demand. CEA and CERC also argue that it is incorrect to assume that in the absence of a 50 percent requirement the result will be no TV sets with DTV tuners will be available. CERC contends that this assumption ignores that fact that there is always some demand for dual tuner products and that manufacturers would meet that demand, but that it is just not 50 percent of the market. CEA states that there is necessarily a substantial lead-in period during which manufacturers will be increasing the number of mid-size receivers that include DTV tuners. It states that with an accelerated 100 percent date of March 1, 2006, this lead-in period naturally would include the holiday season about which broadcasters are concerned. In its reply comments, TTE similarly states that acceleration of the 100 percent requirement to March 1, 2006 will have a positive effect on January and February sales of sets equipped with DTV tuners, including the Super Bowl period as well as March, including “March Madness,” because retailers will decrease their inventories of analog sets throughout the first quarter of 2006 in anticipation of the 100-percent requirement taking effect. In an *ex parte* statement subsequent to the comment period in this proceeding, CEA and CERC suggest that if the Commission determines not to accept the original CEA-CERC proposal, it instead accelerate to March 1, 2006 the date by which all mid-size television sets include digital tuners and delay the 50 percent requirement by four months, to take effect on November 1, 2005.²²

15. CEA, CERC, Panasonic and Philips contend that the proposals by several parties to accelerate the deadline to late 2005 are not feasible.²³ They submit that television manufacturers would have only four months to comply with a November 1, 2005 deadline for including DTV tuners in all receivers and seventeen months to comply with a December 1, 2006 date. Panasonic and TTE state that it is a time-consuming and expensive process to establish specifications for each product, change manufacturing lines, secure orders from retailers, order parts consistent with manufacturing and shipping schedules, etc.

²¹ In his reply comments, Llana states that he now believes that the 100 percent requirement should apply to all TV receivers on November 1, 2006.

²² See Letter from Julie Kearney (Consumer Electronics Association) affirming *ex parte* meeting of Gary Shapiro (President and CEO of the Consumer Electronics Association), Mike Vitelli (Senior Vice President, Best Buy), Robert Schwartz (McDermott Will & Emory and counsel to the Consumer Electronics Retailers Association), and Steve Cannon (Constantine Cannon and counsel to Circuit City) with FCC Chairman Kevin Martin and Catherine Bohigian, June 2, 2005.

²³ CEA submits that Motorola itself earlier endorsed a minimum lead time of 18 months for cable operators to order, deliver, and deploy CableCard enabled set-top boxes. CEA cites the National Cable Television Association’s letter from Neal M. Goldberg, General Counsel, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, in CS Docket No. 9780 (November 17, 2004) that Motorola endorsed in *ex parte* appearances.

TTE submits that these considerations make acceleration of the 100 percent requirement to before March 1, 2006 impossible without threatening to cause television receiver shortages during the 2005 holiday shopping season.²⁴ CEA, CERC, Panasonic, Philips and TTE therefore argue that at this late date, manufacturers cannot reasonably meet any further acceleration of the tuner mandate schedules. CEA and CERC further argue that the DTV tuner implementation schedule is already very aggressive. They express concern that any further acceleration of the tuner schedules could force some manufacturers to increase their production of tuner-less models and/or drop certain models altogether because of their inability to meet the deadlines. In this regard, they note that the DTV tuner requirement only applies to devices that have an analog tuner and that the reality is that most displays are now used to show video programming (via cable, DBS, games, PCs, the internet, etc) that does not involve the use of any broadcast tuner. In their reply comments, MSTV/NAB contend that manufacturer's reference to their 18-month production schedules is a false argument. They state that manufacturers should have already been preparing to include a DTV tuner in at least 50 percent of their mid-size sets by July 1, 2005.

B. 25-36" Receiver Decision

16. After review of the record in this proceeding, we conclude that while the partial production elements of our DTV tuner implementation plan may have caused some confusion in the market, that approach remains workable and will best serve to ensure that DTV tuner equipped receivers in the 25-36" mid-size range are available to consumers until the 100 percent DTV tuner requirement goes into effect. We also find that it is in the interests of consumer electronics manufacturers and retailers and consistent with our goals as stated above to advance the 100 compliance date for mid-size receivers from July 1, 2006 to March 1, 2006.

17. With regard to the 50 percent provision, we find that postponing application of the DTV tuner requirement to the 25-36" receivers until March 1, the earliest date on which manufacturers state that they can meet the 100 percent requirement, would unacceptably delay the general availability of DTV reception capability in these products. While eliminating the 50 percent requirement for mid-size receivers until the 100 percent compliance requirement becomes effective might be more convenient for manufacturers and retailers, such an approach would also delay the wider dissemination of DTV tuners in products of this size range. It remains our intent that the implementation schedule aim for the most rapid introduction of DTV reception capability in this size range and indeed all new television receivers. Postponing the requirement for inclusion of DTV tuners in mid-size TV sets would be inconsistent with our efforts to advance the DTV transition as rapidly as possible. Our intent is to stem the flow of analog-only products as soon as possible for, as Chris Llana aptly states, every analog-only TV set sold is a blow to the DTV transition.

18. Initiating the DTV tuner requirement for mid-size receivers on March 1, 2006, the date that CEA-CERC and manufacturers submit is the earliest feasible time by which manufacturers could meet the 100 percent compliance requirement, would undermine our goal of the most rapid introduction of DTV reception capability. As MSTV/NAB and others point out, the full eight months delay in which no mid-size TV sets would be required to include DTV tuners under that approach would miss the entire holiday and Super Bowl seasons this fall and next winter. Similarly, postponing the initiation of the 50 percent requirement until November 1, 2005 as suggested by CEA-CERC in their *ex parte* letter would miss the summer and most of the fall season and would also allow a large number of analog tuners to enter retailers' inventories for sale just before the holiday season. Moreover, as MSTV/NAB, Chris Llana and others note, consumers who purchase new receivers in the coming holiday and Super Bowl seasons would not likely return to the market again to purchase a new receiver for several years and so would be without a DTV tuner equipped device until they purchased a new set or until they obtained a separate set-top DTV tuner unit.

²⁴ TTE states that the largest barrier to advancing production schedules is the lead time to order and receive necessary parts and components from suppliers.

19. We recognize that there are DTV tuner-equipped mid-size TV receivers on the market now and that if we were to eliminate the 50 percent requirement in favor of a delayed 100 percent requirement there would still be DTV tuner equipped sets for consumers to acquire. Nonetheless, we expect that the quantity of DTV tuner equipped sets sold under that approach would be significantly lower than that under the 50 percent approach, given manufacturers' and retailers' description of the market. We also believe that it would further consumer awareness if manufacturers and retailers would provide point-of-sale and other marketing information to consumers and/or clearly label new television sets to indicate whether they can receive off-the-air DTV signals or only off-the-air analog signals.²⁵ We believe that such efforts would result in more informed consumer choices about whether to buy DTV tuner equipped sets. We therefore encourage manufacturers and retailers to clearly label and identify the tuning capabilities of new TV sets and/or employ other means to disseminate to consumers information regarding whether or not specific models are able to receive off-the-air digital television signals.²⁶

20. With respect to the 100 percent compliance date, we conclude that it will ameliorate the concern of the consumer electronics manufacturers and retailers and further our goal of promoting DTV reception availability to advance the date on which 100 percent of 25-36" receivers will be required to include a DTV tuner to March 1, 2006. Manufacturers have indicated that they will be able to equip 100 percent of new mid-size TV sets with DTV tuners by this date and both manufacturers and retailers support changing the 100 percent compliance date as a step to minimize the difficulties posed by the 50 percent requirement. We do not believe it would be feasible or practicable to advance the 100 percent requirement to a date earlier than that suggested by CEA-CERC. We recognize manufacturers' arguments that the lead time associated with development of new products, and particularly the time needed to establish specifications, change manufacturing lines, and order parts, would not allow the industry generally to meet a 100 percent compliance requirement before March 1, 2006. It makes little sense to require products to be on the market before the general population of manufacturers can deliver them. As many commenting parties observe, if manufacturers were not able to meet our deadline, they might cease production of mid-range sets or switch to monitor products that do not include TV tuners. Such a result would be disruptive to our goal of ensuring that consumers are able to receive DTV signals and could serve to delay the DTV transition. Accordingly, we are maintaining the provision of the current rules requiring that 50 percent of 25-36" television receivers include DTV tuners effective July 1, 2005 and advancing the date on which 100 percent of such receivers must include DTV tuners to March 1, 2006.

C. Further Notice of Proposed Rulemaking

21. Consistent with the need to promote a rapid end to the DTV transition, we now believe it would also be appropriate to advance the date on which all new television receiving equipment must include the capability to receive over-the-air broadcast DTV signals from July 1, 2007 to a date no later than December 31, 2006. This change would advance the date for all TV receivers to include a DTV tuner to a date not later than the statutory target date for the end of the transition.²⁷ We specifically request suggestions for a date no later than December 31, 2006 that would be appropriate for requiring all new television receivers to include DTV reception capability. We believe that including DTV tuners in smaller screen and other traditionally low priced receiver products would not force substantial increases

²⁵ Other information might be provided through point-of-sale materials and displays, Internet websites, or some other appropriate format designed to reach consumers before they make purchasing decisions.

²⁶ We note that the issue of whether to require manufacturers and retailers to label television equipment (including analog-only sets) concerning digital capabilities or limitations remains pending in the Second DTV Periodic Review, MB Docket No. 03-15). See *Second Periodic Review of the Commission's Rules & Policies Affecting the Conversion To Digital Television, Report & Order* in MB Docket No. 03-15, 19 FCC 18280 (2004), ¶¶ 98-106.

²⁷ See 47 U.S.C. § 309(j)(14)(A).

in the price of such products. The majority of all televisions are sets 25" and larger.²⁸ We believe that the economies of scale needed to support reductions on the incremental price of DTV tuner equipped products will therefore be achieved in the introduction of DTV tuners in these mid-size and large screen products, which will occur more than a year earlier. We therefore believe that the price increases for small screen and other receivers will be more modest. In this regard, we observe that Zoran Corporation has indicated to the Commission in an *ex parte* contact that it has developed a reference board that includes a low-cost DTV receiver. It states that this board could be used to manufacture a set-top box that provides DTV reception at the standard definition display level to allow analog-only receivers to display DTV signals for about \$65. Zoran further states that the DTV tuning capability of this board could be incorporated into a TV receiver with display at this time for about a \$80-100 retail price increase and that this price would decrease dramatically with increasing volume.²⁹ We request comment on this proposal and suggestions for alternative approaches for including DTV reception capability in all TV receiving devices on a schedule reflective of the statutory target date for the end of the DTV transition.³⁰

22. We also seek comment on whether the requirement to include a DTV tuner in new receivers should be extended to receivers with screen sizes less than 13" inches. We note that if such devices are to provide off-the-air reception of TV signals after the transition, they too must be able to receive DTV signals and that it is less likely that such products, and particularly handheld and similar portable devices, would be used with a separate device for receiving DTV signals.

23. In order to allow the Commission to conclude action in these proposals in a expeditious manner so as to afford manufacturers the maximum time to prepare to comply with new rules, we are limiting the comment and reply comment periods on these proposals to 21 days and 14 days respectively.

IV. PROCEDURAL MATTERS

A. Report and Order

24. *Accessibility Information.* Accessible formats of this Report and Order and Further Notice of Proposed Rulemaking (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

25. *Paperwork Reduction Act of 1995 Analysis.* This Report and Order and Further Notice of Proposed Rulemaking contains no new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

26. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,³¹ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to the Report and Order section of this action. The FRFA is set forth in Appendix D.

²⁸ Information provided to the Commission's staff on May 11, 2005 show that in 2004, there were 17,433, 000 sets sold in the 25" and larger size range and 13, 140,000 sets sold with screens smaller than 25".

²⁹ See *Ex Parte* presentation by Zoran Corporation to Office of Engineering and Technology staff on May 16, 2005. Zoran believes that by the winter of 2006, the additional retail price for including a DTV tuner in new receivers would fall below \$70. It further states that a number of functions currently in analog sets could be incorporated into a single chip further reducing the price differential below, if not resulting in a lower cost set than current analog models after a few years.

³⁰ The proposed rule changes are set forth in Appendix B.

³¹ See 5 U.S.C. § 604.

B. Further Notice of Proposed Rulemaking

27. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

28. *Comment Information.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before [**21 days after publication in the Federal Register**], and reply comments on or before [**35 days after publication in the Federal Register**]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202)418-7426, TTY (202) 418-7365.

29. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers are referenced in the caption of the comments, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of the comment, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

30. *Initial Paperwork Reduction Act Analysis.* This document contains no proposed new or modified information collection requirements.

31. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act,³² the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Report and Order and Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix E. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice portion of this action, and they should have a separate and distinct heading designating them as responses to the IRFA.

³² See 5 U.S.C. § 603.

32. *Additional Information.* For additional information on this proceeding, please contact Alan Stillwell, Office of Engineering and Technology at (202) 418-2925.

V. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 2(a), 4(i) & (j), 7, 151 and 303 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 152(a), 154(i) & (j), 151, 157, and 303, this Report and Order and Further Notice of Proposed Rulemaking **IS ADOPTED** and the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B, and shall become effective 30 days after publication in the Federal Register. In addition, **IT IS PROPOSED** that the Commission's rules **BE AMENDED** as set forth in Appendix C.

34. **IT IS FURTHER ORDERED** that the Petition for Rulemaking submitted by the Consumer Electronics Association and the Consumer Electronics Retailers Association in this matter on November 5, 2004 **IS DENIED** in part and **IS GRANTED** in part as indicated herein.

35. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.³³

36. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Report and Order and Further Notice of Proposed Rulemaking 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

³³ *See* 5 U.S.C. § 603(a).

APPENDIX A
PARTIES SUBMITTING COMMENTS AND/OR REPLY COMMENTS

Parties Submitting Comments

1. Joint Comments of the Association for Maximum Service Television and the National Association of Broadcasters
2. Association of Public Television Stations
3. Best Buy Co., Inc.
4. Circuit City Stores, Inc.
5. Mariano-Florentino Cuellar
6. Dell, Inc. (*ex parte submission*)
7. Harris Corporation
8. Hewlett Packard Company
9. Chris Llana
10. Motorola. Inc.
11. Panasonic Corporation of North America
12. Pappas Telecasting, Inc.
13. Philips North America Corporation
14. RadioShack Corporation
15. Samsung Electronics Corporation
16. Sanyo Manufacturing Corporation
17. Sanyo Fisher Company
18. Sharp Electronics Corporation
19. Sony Electronics, Inc.
20. TTE Corporation (*ex parte*)
21. Wal-Mart Stores, Inc.
22. The Walt Disney Company

Parties Submitting Reply Comments

1. Joint Reply Comments of the Association for Maximum Service Television and the National Association of Broadcasters
2. Chris Llana
3. Dell, Inc. (*ex parte*)
2. The Consumer Electronics Association
3. The Consumer Electronics Retailers Coalition
4. The National Public Safety Telecommunications Commission
5. Panasonic Corporation of North America
6. Philips Electronics North America Corporation
7. TTT Corporation

**APPENDIX B
AMENDMENTS TO THE COMMISSION'S RULES**

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

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

Authority: 47 U.S.C. 154, 303, 303, 304, 307, and 554A.

2. Section 15.117 of the rules is amended by revising paragraph (i)(1) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(i) Digital television reception capability implementation schedule. (1) Responsible parties, as defined in Section 2.909 of this chapter, are required to equip new TV broadcast receivers that are shipped in interstate commerce or imported from any foreign country into the United States and for which they are responsible to comply with the provisions of this section in accordance with the following schedule:

- Receivers with screen sizes 36" and above- 50% of all of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005
- Receivers with screen sizes 25" to less than 36"- 50% of all of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective March 1, 2006
- Receivers with screen sizes 13" to less than 25"- 100% of all such units must include DTV tuners effective July 1, 2007
- Other devices (videocassette recorders (VCRs), digital video disk and digital versatile disk (DVD) players/recorders, etc.) that receive television signals- 100% of all such units must include DTV tuners effective July 1, 2007.

* * * * *

APPENDIX C
PROPOSED AMENDMENTS TO THE COMMISSION'S RULES

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

1. The authority citation for Part 15 would continue to read as follows:

Authority: 47 U.S.C. 154, 303, 303, 304, 307, and 554A.

2. Section 15.117 of the rules would be amended by revising paragraph (i)(1) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(i) Digital television reception capability implementation schedule. (1) Responsible parties, as defined in Section 2.909 of this chapter, are required to equip new TV broadcast receivers that are shipped in interstate commerce or imported from any foreign country into the United States and for which they are responsible to comply with the provisions of this section in accordance with the following schedule:

- Receivers with screen sizes 36" and above- 50% of all of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005
- Receivers with screen sizes 25" to less than 36"- 50% of all of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective March 1, 2006
- Receivers with screen sizes 13" to less than 25"- 100% of all such units must include DTV tuners effective December 31, 2006
- Other devices (videocassette recorders (VCRs), digital video disk and digital versatile disk (DVD) players/recorders, etc.) that receive television signals- 100% of all such units must include DTV tuners effective December 31, 2006.

* * * * *

APPENDIX D
FINAL REGULATORY FLEXIBILITY ANALYSIS

A. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),³⁴ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* in ET Docket No. 05-24 (*Notice*). The Commission sought written public comment on the proposals on the *Notice* concerning modification of the plan for applying the DTV tuner requirement to TV receivers with screen sizes 25-36”, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³⁵

B. Need for and Objectives of the Proposed Rules. As described in the *Notice*, the changes to the rules considered in this proceeding are intended to ensure a smooth transition of the nation's television system to digital television. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television.³⁶ That effort resulted in several Commission decisions, including those adopting a digital television (DTV) standard,³⁷ DTV service rules,³⁸ and a Table of DTV Allotments.³⁹ The Table of DTV Allotments provides each existing television broadcaster with a second channel on which to operate a DTV station for a transition period in which stations will operate both analog and digital TV service, after which analog service will cease and one of each station’s two channels will revert to the government for use in other services. The transition deadline established by Congress is December 31, 2006.

Consistent with its efforts to promote the expeditious completion of the DTV transition, the Commission adopted a requirement that all new television receivers imported or shipped in interstate commerce after July 1, 2007 include the capability to receive DTV signals off-the-air. In order to minimize the impact of the DTV tuner requirement on both manufacturers and consumers, the Commission adopted a phase-in schedule that applies the DTV tuner requirement first to receivers with the screens and then to progressively smaller screen receivers and other TV receiving devices. The Consumer Electronics Association and the Consumer Electronics Retailers Coalition (CEA-CERC) submitted a petition for rule making requesting that the Commission eliminate the portion of the phase-in schedule requiring that 50 percent of TV receivers with screen sizes 25-36” include DTV reception capability from July 1, 2005 to July 1, 2006 and instead advance the date for requiring all such receivers to include a DTV tuner to March 1, 2006 from July 1, 2006. CEA-CERC argued that the 50 percent requirement has proven to be disruptive to the market in the case of larger screen receivers. We are issuing this Report and Order to modify the portion of the DTV tuner requirement phase-in plan that applies to receivers with screen sizes 24” to 36”. Specifically, we are amending the rules to advance the date on which all 24-36” receivers must include a DTV tuner to March 1, 2006 from the current date of July 1, 2006. Maintaining the 50 percent requirement for the period from July 1, 2005 to February 28, 2005 and advancing the 100 percent compliance date for mid-size receivers to March 1, 2006 will ameliorate the concerns of the consumer electronics manufacturers and retailers with respect to the 50 percent approach and further our goal of promoting DTV reception availability.

³⁴See 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).

³⁵ See 5 U.S.C. § 604.

³⁶ See *Notice of Inquiry* in MM Docket No. 87-268, 2 FCC Rcd 5125 (1987); *see also Tentative Decision and Further Notice of Proposed Rulemaking* in MM Docket No. 87-268, 3 FCC Rcd 6520 (1988).

³⁷ See *Fourth Report and Order* in MM Docket No. 87-268, 11 FCC Rcd 17771 (1996).

³⁸ See *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997).

³⁹ See *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997).

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA: No comments were filed in response to the IRFA.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. 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.⁴⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental entity.”⁴¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴² 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”).⁴³

Electronics Equipment Manufacturers. Rules adopted in this proceeding will apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment⁴⁴ as well as radio and television broadcasting and wireless communications equipment.⁴⁵ These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA’s regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.⁴⁶ Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.⁴⁷ The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as

⁴⁰ 5 U.S.C. § 603(b)(3).

⁴¹ 5 U.S.C. § 601(6).

⁴² 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.”

⁴³ 15 U.S.C. § 632.

⁴⁴ 13 CFR § 121.201 (NAICS Code 334310).

⁴⁵ 13 CFR § 121.201 (NAICS Code 334220).

⁴⁶ 13 CFR § 121.201 (NAICS Code 334310).

⁴⁷ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.⁴⁸ Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.⁴⁹ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.⁵⁰ Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities.⁵¹ The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

E. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. The rule changes adopted in the Report and Order impose no additional recordkeeping or recordkeeping requirements on manufacturers of television receiving equipment, large or small. While the modifications adopted therein may have a small impact on consumer electronics manufacturers, any such impact would be similar for both large and small entities.

F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. 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.⁵²

The modification of the provisions for implementing the DTV tuner requirement in TV receivers with screen sizes in the 25-36" mid-size range set forth herein are intended to ameliorate certain market difficulties described by consumer electronics manufacturers and consumer electronics products retailers and to expedite the availability of DTV tuners in new mid-size television receivers that are offered to consumers. The revisions adopted preserve the requirement for DTV tuners in 50 percent of the new mid-

⁴⁸ 13 C.F.R. § 121.201 (NAICS Code 513220).

⁴⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁵⁰ 13 C.F.R. § 121.201 (NAICS Code 334111).

⁵¹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

⁵² 5 U.S.C. § 603.

size range of receivers for the period July 1, 2005 to February 28, 2005 in order to ensure that such receivers are available as soon as possible and particularly during the 2005 holiday season and 2006 Super Bowl season. The consumer electronics has indicated that it prefers the 100 percent requirement to become effective on March 1, 2006 rather than the original July 1, 2006 date. Advancing the date for 100 percent compliance by mid-size receivers will ameliorate the challenges of the 50 percent provision for manufacturers and retailers and will also serve to promote the availability of DTV tuner equipped TV sets to consumers.

Other approaches considered included various suggestions by broadcasters and others to advance the deadline for DTV tuners in 25-36" sets to dates between November 1, 2005 and January 1, 2005. We rejected the options to advance the 100 percent requirement to a date earlier than March 1, 2006 on the basis that the 5 to 6 month lead-times available to manufacturers under those scenarios would be too short for manufacturers to meet with new products, especially given the lead-times associated with obtaining parts and components from suppliers. Extending the deadline beyond March 1, 2006 would be inconsistent with the need to expedite the DTV transition.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

APPENDIX E
INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁵³ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (Notice) portion of this action.⁵⁴ Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in paragraph 11. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁵⁵ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁵⁶

A. Need for and Objectives of the Proposed Rules. As described in the Notice, the changes to the rules being considered in this proceeding are intended to ensure a smooth transition of the nation's television system to digital television. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television.⁵⁷ That resulted in several Commission decisions, including those adopting a digital television (DTV) standard,⁵⁸ DTV service rules,⁵⁹ and a Table of DTV Allotments.⁶⁰ The Table of DTV Allotments provides each existing television broadcaster with a second channel on which to operate a DTV station for the transition period, after which one of its channels will revert to the government for use in other services. The transition deadline established by Congress is December 31, 2006.

Consistent with its efforts to promote the expeditious completion of the DTV transition, the Commission adopted a requirement that all new television receivers imported or shipped in interstate commerce after July 1, 2007 include the capability to receive DTV signals off-the-air. In order to minimize the impact of the DTV tuner requirement on both manufacturers and consumers, the Commission adopted a phase-in schedule that applies the DTV tuner requirement first to receivers with the screens and then to progressively smaller screen receivers and other TV receiving devices. Consistent with the need to promote a rapid end to the DTV transition, we now believe it would also be appropriate to advance the date on which all new television receiving equipment must include the capability to receive over-the-air broadcast DTV signals from July 1, 2007 to December 31, 2006. This change would move the date for all TV receivers to include a DTV tuner forward six months to coincide with the statutory end of the transition and also provide adequate time for manufacturers to modify their products to include DTV tuners in all new television sets.⁶¹

⁵³ 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).

⁵⁴ See Report and Order and Further Notice of Proposed Rulemaking in ET Docket No. 05-24, FCC 05-121, released June 9, 2005.

⁵⁵ See 5 U.S.C. § 603(a).

⁵⁶ See *id.*

⁵⁷ See *Notice of Inquiry* in MM Docket No. 87-268, 2 FCC Rcd 5125 (1987); see also *Tentative Decision and Further Notice of Proposed Rulemaking* in MM Docket No. 87-268, 3 FCC Rcd 6520 (1988).

⁵⁸ See *Fourth Report and Order* in MM Docket No. 87-268, 11 FCC Rcd 17771 (1996).

⁵⁹ See *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997).

⁶⁰ See *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997).

⁶¹ See 47 U.S.C. § 309(j)(14)(A).

B. Legal Basis. The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) & (j), 303, 307, 309 and 336.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. 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.⁶² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental entity.”⁶³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶⁴ 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”).⁶⁵

Electronics Equipment Manufacturers. Rules adopted in this proceeding would apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment⁶⁶ as well as radio and television broadcasting and wireless communications equipment.⁶⁷ These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA’s regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.⁶⁸ Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.⁶⁹ The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA’s regulations, a radio and television broadcasting

⁶² 5 U.S.C. § 603(b)(3).

⁶³ 5 U.S.C. § 601(6).

⁶⁴ 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.”

⁶⁵ 15 U.S.C. § 632.

⁶⁶ 13 CFR § 121.201 (NAICS Code 334310).

⁶⁷ 13 CFR § 121.201 (NAICS Code 334220).

⁶⁸ 13 CFR § 121.201 (NAICS Code 334310).

⁶⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.⁷⁰ Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.⁷¹ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.⁷² Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities.⁷³ The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. At this time, we do not expect that the rule changes being considered in this proceeding would impose any additional recordkeeping or recordkeeping requirements. While the modifications being considered in the Notice could have an impact on consumer electronics manufacturers and broadcasters, we anticipate at this time that such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for recordkeeping under specific options for addressing the issues in this Notice and, if so, whether the burden would fall on large and small entities differently.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. 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.⁷⁴

The rule changes under consideration in this proceeding propose a revision in the schedule for implementation of the requirement that new television receivers include the capability for reception of broadcast DTV signals. We requested comment on a proposal that would advance to December 31, 2006

⁷⁰ 13 C.F.R. § 121.201 (NAICS Code 513220).

⁷¹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁷² 13 C.F.R. § 121.201 (NAICS Code 334111).

⁷³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

⁷⁴ 5 U.S.C. § 603.

(from the current July 1, 2007) the date by which all television receivers with screen sizes 13” and larger that are imported into the United States or shipped in interstate commerce must include the capability to receive over-the-air DTV broadcast signals. Because of our concern for advancing the full compliance date in a manner that would pose no unnecessary economic burden on smaller entities, we invited interested parties to submit alternative suggestions for revising and suggestions for alternative approaches for including DTV reception capability in all TV receivers on a schedule to coincide with statutory end of the DTV transition. We also invited comment on whether we should also extend the DTV tuner requirement to TV receivers with screen sizes less than 13”.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission’s Proposals. None.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Requirements for Digital Television Receiving Capability, Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 05-24

Congress's decision to mandate the digital television transition requires the Commission to take an unusually direct role in overseeing the manufacturing and sale of television receivers. Having embarked on this important transition — which will deliver high-value broadcasting services to consumers, enable exciting new broadband applications to be developed, and provide more spectrum for public safety uses — we cannot take any steps backward. Rather, we need to push the transition to its conclusion as expeditiously as possible.

I am therefore pleased that this Order declines to delay the date by which manufacturers must incorporate digital tuners in television sets with screen sizes of 25-36 inches. While I am sympathetic to the claims that requiring only 50% compliance will cause some unanticipated problems in the marketplace, the proposed delay simply would exact too great a cost on the overall progress of the DTV transition. Yet I applaud the Consumer Electronics Association and Consumer Electronics Retailers Association for ultimately recognizing the independent value of accelerating the end point of this transition, independent of the delay they sought on the front end. With these stakeholders' support, this Order makes important progress by ensuring that all sets in the relevant size range will have digital tuners by March 2006, rather than the original deadline of July 2006.

I also support the issuance of a further notice seeking comment on the acceleration of the remaining phases of the tuner mandate. By establishing a record on such changes, the Commission will be better equipped to work with Congress on the rapid completion of the DTV transition and the many consumer benefits it entails.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Requirements for Digital Television Receiving Capability, Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 05-24

Today's order makes clear that this Commission is committed to moving the digital transition forward. Each time a consumer purchases a set with a digital tuner, we move one step closer towards accomplishing the transition.

I am pleased that this order highlights the importance of manufacturers and retailers providing needed consumer information to buyers before they become owners of sets. We will only succeed in accelerating the digital transition when we—government and industry both—confront head-on the significant consumer confusion that exists in this area. For our part, I know the Chairman and my colleagues are all committed to continuing and expanding our consumer education and outreach efforts as the transition proceeds.

The bottom line is to ensure that the DTV transition remains on track. I believe this order is a good step in the right direction.