C. POST-ALLOTMENT ADJUSTMENTS AND TRANSITIONAL SPECTRUM USE MUST BE APPROACHED WITH GREAT DELIBERATION AND CARE AS THEY REPRESENT SERIOUS DEPARTURES FROM THE EXISTING SYSTEM OF ALLOCATING BROADCAST SPECTRUM.

The Further Inquiry advances both post-allotment adjustment of ATV allotments by and between broadcasters to "fine-tune" to local conditions or desires and "transition-only" non-ATV use of supplemental spectrum. Both proposals draw on concepts advanced before by the Commission and other-wise referred to as "negotiated interference" and "flexible use".

NAB has before voiced its concerns with these concepts.[46] The Commission, we note, recites our concerns and goes to some lengths to tailor its proposal as to transitional spectrum use to accommodate those concerns. Some concerns are in fact assuaged by procedures carefully crafted for this context. But we must repeat here that the underlying concepts involve private parties' determining, perhaps conclusively, the extent of television service, or not, provided over given facilities. We continue to question whether such a course is wise or whether it is permitted under the Communications Act.[47]

NAB, in its comments on the initial Notice of Inquiry in this proceeding, described our most important concerns as: one, the sureness of interference protection, and two, the preservation of service and spectrum for free, over-the-air television. We believe that those previous comments bear repeating here, because they go to the very heart of our concerns and because they show that these concepts have been proposed in varying forms and shapes, and thus suggest

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[46]NAB Comments at pp. 20-22.

[47]As we have said, under the Communications Act of 1934, 47 U.S.C. 303 (b)(c), the FCC has the obligation to allocate spectrum. Flexible use and negotiated interference would seem to eviscerate the Commission's role and responsibilities in fulfilling that obligation and thus would be of questionable authority under the Act.

that particular procedures in one context may not protect against extension of these concepts in other contexts. NAB commented in those initial comments as follows:

> One, we do not believe that any "flexible private" system, no matter how carefully crafted, can provide the surety of protection against interference to television reception that today's system of clear and easily enforceable interference rules provides. Interference protection is simply not something that can be left to private parties. The actual implementation of an agreement between two broadcasters, or between a broadcaster and another service-type, could easily and perhaps unidentifiably, though unintentionally, cause interference to the public's reception of the signals of a third and fourth broadcaster. High technical quality has always been a hallmark of over-the-air broadcasting. It needs to remain so, with whatever wonderful enhancements, in service and quality, that can be added -- but not at the cost of the technical integrity of the basic service.
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> Whether it be "flexible use" of augmented broadcast spectrum or privately-negotiated giving and receiving of interference (as to the use of non-NTSC ATV formats or to ATV operation contrary to the UHF taboos), the proposals are just too risky to basic technical integrity needed for this nation's television service. We cannot risk any degradation in service, whether expected or unexpected. Much less can we risk the chaos and cacophony that can come from unmanaged spectrum and from unadhered-to or carelessly-implemented agreements among private parties.
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> Two, NAB fears that "flexible" use could result in less spectrum, and therefore less coverage, for broadcast television. The trading-away of added spectrum or of interference protection well could result in a "permanent" reduction in stations' coverage areas, and, if extended, in the number of stations. So, too, could it compromise the ability of future owners to offer advanced television service because of prior long-term contractual "leasing" of spectrum that a new owner needs to provide ATV. Marketplace principles may not protect the public interest in the provision of "free" television service when that service is pitted against an entirely different market demand for non-broadcast services. As we have pointed out previously, situations well may arise where it will be in the licensee's financial interest to lease its channel, or part of its service area, to other radio services even though there is a public need or demand for the established video programming. And, as we have also said, once a broadcast channel (or pieces of a channel) falls under the control of non-broadcasters, whether by leasing arrangements or otherwise, it might not be possible to rededicate that

> spectrum to broadcasting in the future, no matter how great the demand for new video service or enhancements. This would be especially so if a 6 MHz television channel were subdivided and occupied by several non-television users, as the process of reassembling a 6 MHz block for television service might not be possible. Situations will arise when a new television operator can't "outbid", for example, a single private land mobile operator and thus just can't reel in all the pieces of a dispersed channel, at whatever price.
>
> And, as to high definition or "advanced" television service specifically, NAB is concerned that a "flexible" system that essentially allows HDTV or ATV use to be outbid by, say, a land mobile delivery service, works against a nation-wide implementation of ATV. Such a system would make a major industry transition more, rather than less, difficult -- and less sure. What might be intended to facilitate a local exigency could stymie a national objective.[48]

We believe our concluding comments to the initial Inquiry also bear repeating:

> While NAB has here voiced its very serious opposition to the idea of flexible use, we also note the point sure to be made by other commentators less sure of their ultimate feelings about flexible use. At the least, these "flexible" proposals and any specific discussion of squeezing or sharing or trading of spectrum or interference is very premature. No one yet knows, and can't know, what interference protection criteria, or spectrum, will be required for any of the ATV systems presently under development. Those specifications are what will be determined in the coming months of technical evaluation and testing, along with the issues of what works, how well, at what costs, at what benefits. It is just too early to talk about agreements, private or otherwise, on implementation.[49]

V. CONCLUSION

NAB draws the Commission's attention to NAB's proposed timetable of action, put forward in its previous comments in this proceeding, wherein we

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[48]NAB Comments at 20-22.

[49]Id.

presented a plan of action in concert with the ATSC and other industry associations "for the orderly study, testing and implementation of a new [ATV] television broadcast standard."[50] We believe the substance of this plan is on point and its schedule of activities reasonable. We therefore urge the Commission to accommodate these industry-wide efforts with timely, not precipitous, actions.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1171 N ST., N.W.
Washington, D.C. 20036

Michael C. Rau

Michael C. Rau
Vice President, Science & Technology

/s/ M.C. Rau

Ralph Justus
Director, Engineering Regulatory and
International Affairs

Valerie Schulte
Julie Rones
Of Counsel

Lynn D. Claudy
Staff Engineer

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[50] See NAB Comments at 6-7, and Appendix B.