

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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JUN 22 1992

Federal Communications Commission
1919 M Street, N.W.
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Petition for Reconsideration
Advanced Television Systems
MM Docket No. 87-268
Second Report and Order

ORIGINAL
FILE

Dear Commissioners:

Diversified Communications, Maine Radio and Television Company, and Guy Gannett Publishing Company ("Petitioners") hereby petition the Commission to reconsider certain aspects of its decision in the Second Report and Order in MM Docket No. 87-268, May 8, 1992. For the reasons set forth herein, Petitioners urge the Commission to modify the implementation schedule adopted in the Second Report for the conversion to an all ATV system for over-the-air broadcast television and to stagger the deadline for filing initial ATV authorizations.

The Petitioners. Petitioners operate television stations in numerous smaller markets. The markets involved are listed on the attached Exhibit 1. While all of the stations licensed to Petitioners are network affiliates, each station faces a unique competitive situation. Thus, Petitioners possess a broad range of experience and expertise relative to the issues presented herein, that is, reasonable relief for smaller market television licensees.

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Like other similarly-sized broadcast groups, as well as single-station owners, Petitioners strongly support the Commission's core decision to provide existing broadcasters with the first opportunity to apply for and operate replacement stations in the ATV mode. As noted by the Commission, the experience and resources of television licensees offer the best assurance that ATV will develop in a commercially reasonable time frame. Nevertheless, although we are resigned to the fact that ATV will be a reality, we are not anxious to incur the substantial capital costs that will be associated with the conversion before the market for ATV service exists. Therefore, we ask the Commission to revise its conversion schedule to permit market forces to play the dominant role, and to recognize the vastly different impact in requiring a UHF station in market 165, for example, to construct an ATV transmission system versus the impact on a VHF network-owned affiliate in New York City.

Marketplace Flexibility. The Commission's scheme, which would apply to all markets and stations equally, compresses the process into an arbitrary 15-year cycle. In its starkest terms, broadcasters will have two years to apply; three years to construct; four years to begin 100% simulcasting; and six years for the nation to complete the conversion to an all-ATV television system. Unfortunately, this scheme is unrelated to marketplace conditions that will in fact determine how fast the conversion occurs. It is impossible to predict how soon this transformation will occur and the Commission should not try to force an arbitrary schedule on the process.

Rather, the Commission should permit the forces in a market economy to develop naturally. The Commission's role must be limited and is complete when it announces the end result - an all ATV system in place of the NTSC system - and establishes the date by which initial applications must be filed. Once that initial deadline is reached, the Commission should pause and, if it feels more deadlines are required, survey the marketplace and adopt dates that are more realistic for conditions at that time. The Commission's watchword should be "flexibility" for broadcasters and the marketplace. Do not impose a rigid 15-year schedule that will be outdated and superseded by marketplace forces.

Petitioners submit that this has been the Commission's experience in numerous other communications services. For example, neither the Commission, or the "experts" in 1982, predicted the rapid growth and acceptance of the cellular telephone service. On the other hand, the Commission, despite repeated regulatory stroking, has been unable to hasten the development of wireless cable, a service that may never be supported in the marketplace. While there are other examples, the critical point is that neither the Commission, or any other body, can realistically project a 15-year cycle for ATV development. Technological changes and the marketplace will determine what will occur. As noted above, Petitioners believe that the Commission's role is complete when it announced the policy that ATV will replace NTSC and establishes the deadline for initial applications.

Small Market Relief. The second basis upon which Petitioners request reconsideration is the need for the Commission to provide relief for smaller market broadcasters. The Second Report establishes a single filing deadline - two years - equally applicable to the New York City ADI with over 7,000,000 television households and to Alpena, Michigan (Market 209) with 15,700 TV households.

The capital cost for an ATV transmission system (antenna, transmitter, etc.) will be relatively comparable, but the economic impact on smaller market stations could be devastating. It may be that some stations will never be able to support the change-over to ATV and will go dark. However, we submit that a more rationale approach would be to schedule the initial filing deadlines on a staggered basis based on market size. The Commission already uses market size in certain cable and programming regulations and has successfully used a staggered filing schedule in services like cellular telephone.

The logical expectation is that costs for ATV production, transmission and reception equipment will decrease as demand increases. And, as these costs decrease, smaller market stations will be better able to absorb the capital outlay necessary to become ATV operators. We also anticipate that technological developments in ATV will be rapid and dramatic. Again, smaller market stations will be better able to take advantage of improved, and less expensive, second generation equipment if a staggered application process is employed.

Furthermore, there are approximately 1,500 operating TV stations. The Commission's ability to process ATV applications would be swamped if all television licensees file ATV applications on approximately the same date. A staggered filing approach will permit the more efficient and timely processing of applications and avoid the types of situations that have occurred with wireless cable and LPTV where the number of applications has been impossible for the Commission's staff to process.

Insofar as the new deadlines that should apply, Petitioners suggest an initial filing deadline for the top-25 markets, which would cover approximately 50% of the television households in the United States. A year later, applications for markets 26-50 would be due, which would cover almost 70% of the television households; a year after that applications for markets 51-100 would be due, and a year later applications for the remaining markets would be due. Stations in any market could, of course, file before their respective deadlines, if they elect to do so.

It would be reasonable to give the first group of stations in the top-25 markets a longer time to complete construction. In effect, stagger the construction periods in reverse order of filing. Thus, if stations in the below top-100 markets have three years to complete construction, stations in the top-25 markets would be granted six years to complete construction; markets 26-50 would have five years; and markets 51-100 would have four years. Construction of ATV stations will not occur on schedule because the Commission demands it. Instead, it

will be market forces that spur construction. For example, if receiver prices drop more quickly than anticipated and viewer acceptance of ATV is greater than anticipated, and VCR and cable offerings in the ATV mode develop more quickly than expected, broadcasters will be motivated to act. Likewise, if one station in a market decides to construct and operate an ATV facility as quickly as possible, competitive forces, not FCC dogma, will motivate competitors to convert to ATV earlier than planned.

On the other hand, if ATV is slow to gain viewer acceptance or demand, the audience for ATV programming, and station revenue, will be limited for longer than anticipated to the few persons (e.g. 10%-20%) in each market who want the latest gadget. If, for example, 10% of the TV households in the New York ADI convert to ATV, this equates to over 700,000 households (approximately ADI Market 35). Meanwhile, 10% penetration in the Alpena market would equate to less than 2,000 households. Thus, elemental fairness demands some staggered system for the filing of the initial ATV applications. Finally, the Commission should not foreclose low ATV set penetration as a reasonable basis for an extension of time to complete construction.

For these reasons, Petitioners request the Commission to reconsider its ATV rules in accordance with these proposals.

Respectfully submitted

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June 19, 1992

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EXHIBIT 1

Diversified Communications. Diversified operates television stations in five smaller markets. The markets involved are:

<u>Station</u>	<u>Channel</u>	<u>Market</u>	<u>1992 ADI</u> <u>Market Rank</u>
WYOU-TV	22	Wilkes Barre- Scranton, Pennsylvania	49
WCTI-TV	12	Greenville-New Bern- Washington, North Carolina	104
WPDE-TV	15	Florence-Myrtle Beach, South Carolina	138
WABI-TV	5	Bangor, Maine	155
WCJB-TV	20	Gainesville, Florida	165

Diversified has operated WABI-TV in Bangor, Maine since it was constructed in 1953. Diversified acquired WCJB-TV, Gainesville, Florida in 1976; WPDE-TV, Florence South Carolina in August 1985; WCTI-TV, New Bern, North Carolina in February 1986; and WYOU-TV, Scranton, Pennsylvania in September 1986.

Maine Radio and Television Company. Maine Radio and Television operates television stations in three smaller markets. The markets involved are:

<u>Station</u>	<u>Channel</u>	<u>Market</u>	<u>1992 ADI Market Rank</u>
WCSH-TV	6	Portland, Maine	69
WLBZ-TV	2	Bangor, Maine	155
KMEG-TV	14	Sioux City, Iowa	137

Maine Radio and Television has operated WCSH-TV in Portland, Maine since it was constructed in December 1953. The company acquired WLBZ-TV in Bangor, Maine in May 1958 and acquired KMEG-TV in Sioux City, Iowa in September 1986.

Guy Gannett Publishing Company. Guy Gannett Publishing Company operates television stations in four smaller markets. The markets involved are:

<u>Station</u>	<u>Channel</u>	<u>Market</u>	<u>1992 ADI Market Rank</u>
WGME-TV	13	Portland, Maine	69
WICS-TV	20	Springfield-Decatur- Champaign, Illinois	75
KGAN-TV	2	Cedar Rapids-Waterloo- Dubuque, Iowa	83
WGGB-TV	40	Springfield, Massachusetts	96

Guy Gannett has operated WGME-TV in Portland, Maine since the station was constructed in May 1954. The Company acquired WGGB-TV in Springfield, Massachusetts in June 1967; KGAN-TV, Cedar Rapids, Iowa in August 1981; and WICS-TV, Springfield, Massachusetts in January 1985.

CERTIFICATE OF SERVICE

I, Coléte N. Porter, do hereby certify that on this 22nd day of June, 1992, a copy of the foregoing "Petition For Reconsideration" was sent by first-class United States mail, postage prepaid, to the following:

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