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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MM Docket No. 87-268

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
Advanced Television Systems)
and Their Impact upon the)
Existing Television Broadcast)
Service)

**Reply Comments of the
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters ("NAB")¹ hereby submits reply comments in response to the Commission's Second Report and Order and Further Notice of Proposed Rule Making ("Further Notice") in the above-referenced proceeding.² NAB was a party to the Comments on the Further Notice filed by the Joint Broadcasters in this proceeding on July 17, 1992. In these reply comments, NAB responds to the views of other commenters on the critical issues of (1) the Commission's NTSC/ATV simulcasting proposal and (2) land mobile sharing of spectrum now allocated for UHF television.

I. The Commission Should Consider Establishing a Simulcasting Requirement, If at All, Only Toward the End of an ATV Transition Period.

The Commission's proposals for NTSC/ATV simulcasting began with the desirable goal to "protect the existing investment in consumer equipment during this [ATV] transition period and take steps to ensure that consumers are not forced to purchase new television receivers in order to enjoy top quality, over-the-air television programming."³ Subsequently, the Commission concluded that "a 100 percent simulcasting requirement is necessary at the

¹ NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and all the major networks.

²MM Docket No. 87-268, 7 FCC Rcd 3340 (1992).

³ See Notice of Proposed Rule Making ("Notice") in MM Docket No. 87-268, 6 FCC Rcd 7024 (1991), at ¶ 45.

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earliest appropriate point",⁴ and now specifically proposes to adopt a 100 percent requirement no later than four years after the proposed five year application/construction period and a 50% simulcasting requirement after two of those four years have elapsed.⁵

For the reasons discussed below, NAB opposes establishing any rigid simulcasting guidelines for NTSC/ATV simulcasting at this time. The Commission should consider establishing a simulcasting requirement, if at all, only toward the end of an ATV transition period. None of the Commission's rationales supporting imposition of a simulcasting requirement at this time appear to withstand careful analysis: a simulcasting requirement is not necessary to (1) protect existing NTSC viewers from an erosion of programming quality or (2) satisfy Ashbacker concerns. Most importantly, however, broadcast stations need flexibility in programming for their ATV channels in order for a United States market in ATV to develop.

A. The Commission Should Provide Flexibility to Broadcasters to Facilitate the Opportunity for ATV Markets to Develop.

On June 22, 1992, NAB filed a Petition for Partial Reconsideration in the present proceeding, emphasizing, in part, that flexibility in implementation will be a key element in achieving a successful ATV transition. Broadcasters need the flexibility to offer "ATV programming" which is available and likely to attract ATV viewers. As many broadcasters believe, establishing the specifics of a rigid simulcasting phase-in program is too conjectural at this point and is best deferred until the marketplace has provided some answers to the question of how to best serve the needs of the public.⁶ There are technical aspects to producing HDTV programming that suggest that programming flexibility will promote the best opportunity for broadcasters to help develop ATV markets.

⁴ Further Notice, supra n.2, Appendix B at 4.

⁵ See Id. at ¶¶ 60-62.

⁶ See, generally, Joint Broadcaster Comments in MM Docket No. 87-268, filed December 20, 1991 ("Joint Broadcaster Comments I") at 28-29; Joint Broadcaster Comments in MM Docket No. 87-268, filed July 17, 1992 ("Joint Broadcaster Comments II") at 21-23.

"At least in the early days of HDTV implementation, a station should be free to experiment with the new HDTV marketplace, to take full advantage of HDTV production values, and to promote the availability and uniqueness of HDTV."⁷

One of the key areas of flexibility is in the choice and use of upconversion from NTSC to ATV. The Commission tentatively concluded that upconverted NTSC programming transmitted on the ATV channel must be simulcast programming.⁸ While NAB does not specifically oppose this Commission policy, we strongly caution the Commission that further regulatory restrictions on the use of upconversion will constrain the creativity of program producers. The Commission may be extending the definition of simulcasting beyond its traditional meaning of "same program content" into the realm of production standards, an undesirable path to follow.⁹

Moreover, given the costs of ATV equipment, some upconversion of NTSC programming will certainly be necessary in the early ATV years simply to maintain operations and supply some programming to the ATV channel. One ATV proponent notes that upconverters will be needed due to the high cost of HDTV cameras.¹⁰ Although one manufacturer has delivered in excess of 150 HDTV cameras to the world marketplace over the past eight years,¹¹ it is dismaying that the cost of an HDTV camera is still on the order of a quarter-million dollars. Substantial investment in studio equipment in this price range may not be realistic for many broadcasters for a number of years. At the same time, launching a viable ATV service will necessitate, at times, the employment of NTSC-ATV upconversion techniques. In NAB's view, less, rather than more, regulatory restriction on the use of upconverted NTSC programming (or, for that matter, any programming technically derived

⁷ Joint Broadcaster Comments II at 23.

⁸ Further Notice, *supra* n.2 at ¶ 65.

⁹ See Comments of Fox, Inc. in MM Docket No. 87-268, filed July 17, 1992 ("Fox Comments") at 5.

¹⁰ Comments of General Instrument Corporation in MM Docket No. 87-268, filed July 17, 1992 ("General Instrument Comments") at 6.

¹¹ Comments of Sony Corporation of America in MM Docket No. 87-268, filed July 17, 1992 ("Sony Comments") at 12.

from sources other than full HDTV quality) will best encourage the development of ATV markets.

Finally, broadcasters need flexibility in order to choose and offer programming that is most likely to attract ATV viewers. The timing of these choices cannot be known in advance; but some parties believe that TV households with both NTSC and ATV capability would be better served by more diverse, as opposed to less diverse, or simulcast, ATV program offerings.¹² HDTV programs, when produced to properly exploit the capabilities of the medium, can produce a far greater sense of reality -- which will attract the attention of viewers.¹³ The Commission should be careful not to constrain the creative potential of HDTV as an entirely new style of dramatic presentation. The more original and diverse the ATV programming, the more likely that ATV markets will develop fully, particularly with regard to consumers' decision to purchase ATV television sets.¹⁴ Better resolution is unlikely to be enough, on its own, to motivate consumers to migrate to ATV. A rigid simulcasting requirement, specified today, will constrain the ability of broadcasters to offer the diversity that will attract viewers to ATV and, therefore, will slow and hamper the development of the ATV market.

B. A simulcasting requirement is not necessary in order to protect NTSC audiences.

NAB agrees with the Commission that protecting NTSC viewers in the ATV conversion and market development process is an important goal. In NAB's view, however, normal market forces will provide the necessary protection without governmental intervention. A simulcasting requirement simply is not necessary. It is, in fact, unnecessary regulation. Broadcasters have many reasons not to abandon their NTSC viewers, especially in the early years of ATV transition when ATV receiver penetration is low and the majority of the

¹² See Fox Comments at 9.

¹³ Sony's list of features needed to achieve a critical mass of acceptance by viewers includes greater than 50" images, 16:9 aspect ratio, wider angle of view and multichannel digital sound. Sony Comments at 43.

¹⁴ See Sony Comments at 45.

broadcast audience is still an NTSC audience.¹⁵ Additionally, over the long term, there are two technological solutions -- ATV-to-NTSC downconverters and NTSC decoders in ATV televisions -- that will be readily available to further insure that NTSC viewers will have access to NTSC programming for as long as there is NTSC service.

ATV receivers almost certainly will incorporate the ability to receive NTSC programs. One television set manufacturer stated that receivers manufactured during the ATV transition period will be NTSC-capable and estimated the cost to consumers at \$50 to \$100.¹⁶ Thus, the cost of including NTSC capability is small and not likely to be seen as burdensome to consumers, when compared with the overall cost of a large screen ATV receiver. Another manufacturer also believes that ATV receivers will incorporate NTSC capability and noted that virtually all HISION receivers now available in Japan (from multiple manufacturers) include NTSC capability.¹⁷

NTSC viewing also is protected by the availability of ATV-to-NTSC downconverters. NAB agrees with the comments of Fox, Inc. that inexpensive downconverters should be considered as a generally less restrictive alternative to a simulcasting requirement.¹⁸ While the price of ATV-to-NTSC downconverters initially may be high, the price will fall considerably over time.¹⁹

¹⁵ See Fox Comments at 9.

¹⁶ See Comments of Zenith Electronics Corporation in MM Docket No. 87-268, filed July 17, 1992 ("Zenith Comments") at 5. Zenith also stated its belief that the first receivers will be large screen direct view (up to 35") or projection units, and estimated their cost as 50% to 100% above the current cost for a similar size NTSC set. *Id.* at 3.

¹⁷ See Sony Comments at 49.

¹⁸ See Fox Comments at 10.

¹⁹ See Zenith Comments at 5 (NTSC downconverters will become available and estimated the initial price at more than \$500, falling by half over time); Comments of the EIA ATV Committee in MM Docket No. 87-268, filed July 17, 1992 ("EIA ATV Comments") at 9 (early downconverters may cost \$500 to \$1500 or potentially falling to the \$100-\$300 range after 15 years); Sony Comments at 38 (cost of downconverters may drop to one third the price of the digital decoder in the ATV receiver within five years, depending on the factors of volume, competition, and commitment to large scale IC chips); General Instrument Comments at 6-7 (including downconverters will not be a major cost compared to the picture tube and deflection system associated with ATV receivers); and Comments of AT&T in MM Docket No. 87-268, filed July 17, 1992 ("AT&T Comments") at 4 (downconverters could be in the \$200 range by the end of the proposed fifteen year conversion period).

While several commenters, such as the EIA ATV Committee and Sony, feel that consumers are not generally enthusiastic about add-on boxes for television sets, the circumstances of marketing a downconverter may be different enough from past experience to make conclusions difficult to reach at the present time. Still, there is potential for the use of inexpensive downconversion equipment to supplement market forces in achieving the Commission's goals of protecting current NTSC viewers and encouraging the purchase of ATV sets to spur along the transition to an all-ATV environment. A rigid simulcasting requirements, adopted at the beginning of the ATV transition period, simply isn't necessary to achieve the former goal, and quite likely would retard the latter.

C. A simulcasting requirement is not necessary to satisfy Ashbacker concerns.

In its comments, the National Cable Television Association ("NCTA") argues that a delay in establishing a simulcasting requirement until several years after the initial ATV application/construction period necessarily indicates that ATV should be viewed as a new programming service, and not a new technology. NCTA states that a new programming service without competitive/comparative process is of questionable legality under the Ashbacker doctrine.²⁰

NCTA mis-interprets the applicability of Ashbacker to simulcasting. The Commission has consistently stated that restricting eligibility for ATV licenses to existing broadcasters, i.e., defining an eligible class of applicants for ATV, is permissible and consistent with Ashbacker.²¹ Further, the Commission has the flexibility to establish threshold qualification standards that must be met before applicants are entitled to comparative consideration.²²

²⁰ Comments of the National Cable Television Association in MM Docket No. 87-268, filed July 17, 1992 ("NCTA Comments") at 5.

²¹ Further Notice, supra n. 2 at ¶ 6 and n. 10. See also Tentative Decision and Second Notice of Inquiry in MM Docket No. 87-268, 3 FCC Rcd 6250, at ¶ 137 (1988).

²² Id. See also Notice, supra n.3 at ¶ 7.

Restricting the class of eligible applicants for ATV facilities is lawful in the pursuit of a Commission-articulated public interest goal; i.e., establishing ATV service for the public as quickly and inexpensively as possible,²³ and, in NAB's view, does not depend on the existence of a simulcasting requirement.²⁴ The Commission has concluded that the television broadcast industry should be given the opportunity to implement ATV to ensure the rapid development of ATV service.²⁵ The Commission has also clearly defined ATV as a replacement service, not a new service, by proposing that each licensee surrender their NTSC channel.²⁶ NCTA's argument that 100% simulcasting will be necessary from the beginning of ATV service to satisfy Ashbacher concerns is simply without merit.

NCTA also proposed restricting the definition of simulcast programs to those containing the same underlying material and airing at the same time.²⁷ But, the Commission's rationale for invoking a simulcasting requirement would be to make ATV programs available to NTSC viewers during the ATV transition, a goal which will be met even where programs on the ATV and NTSC channels are time-shifted relative to each other. NAB agrees with the Commission's suggested definition of simulcasting as programs containing the same underlying material presented within the same 24-hour time period.²⁸ The Commission's proposal offers some flexibility to develop the ATV medium by presenting programming that is special, at least in time. NCTA does not offer a meaningful argument for requiring same-time airing of simulcast programs and even admits that "NTSC viewers would arguably not be disenfranchised if the programming is made available to them at a different time."²⁹ No public interest issue is served by restricting the definition of simulcasting to same-time airing.

²³ Further Notice, supra n. 2 at ¶¶ 4-8.

²⁴ Id. at ¶ 6 and the authorities collected at n. 10 therein.

²⁵ Id. at ¶ 4.

²⁶ Further Notice, supra n.2 at ¶ 50.

²⁷ NCTA Comments at 7.

²⁸ Further Notice, supra n.2 at ¶ 64.

²⁹ NCTA Comments at 17.

II. Land Mobile Sharing of UHF Spectrum Should Not Be Instituted at the Expense of Constricting ATV Market Development.

In its comments, the Land Mobile Communications Council ("LMCC") requests that the Commission make available for Land Mobile services any ATV allotments that might result from a failure of an existing NTSC licensee to construct and operate an ATV facility. LMCC's proposal is inconsistent with the Commission's goals and policies on ATV.³⁰

The Commission has not proposed to winnow down the number of broadcasters in this country through the introduction of ATV service. The Commission has proposed shifting the entire existing television industry from NTSC to ATV service and is committed to making sure that every existing broadcaster is given an opportunity to participate. In making this transition, however, there are sure to be many pitfalls along the way and, despite all good intentions, some licensees may fail in their initial attempts to launch ATV service. NAB believes that others are likely to apply for ATV facilities that might thereby become available. A grant of LMCC's request could unnecessarily shrink the number of ATV channels available in a market. Such a policy is contrary to the stated goals of the Commission. In the unfortunate case that a licensee is unable to meet its deadlines and loses its ATV license eligibility, the Commission has proposed a sound responsible policy resulting in the opportunity for other applicants to vie for the use of the ATV channel for the purpose of ATV broadcasting.³¹ NAB supports the Joint Broadcaster Comments that call for less, not more, land mobile sharing of UHF spectrum, based on the barely adequate supply of spectrum that is available for a fair and equitable ATV simulcasting transition.³² Serious consideration of the LMCC request should not be afforded as it would increase the uncertainties of ATV market development due to the possibilities of serious spectrum loss for new ATV service.

³⁰ See Comments of the Land Mobile Communications Council in MM Docket No. 87-268, filed July 17, 1992 ("LMCC Comments") at 5.

³¹ Further Notice, *supra* n.3 at ¶ 14.

³² Joint Broadcaster Comments I at 36-38.

III. Conclusion.

Allowing flexibility to broadcasters in programming their ATV channel will be a critical element in achieving a successful ATV transition. Many commenters in this proceeding agree that top quality programming will continue to be available to the NTSC audience via normal market forces in the near to medium term, and, in the longer term, through the availability of economical dual mode receivers and NTSC downconverters. The importance of instituting simulcasting requirements at this time is not supported by the record before the Commission. If at all, simulcasting requirements should be instituted at the end, not the beginning, of an ATV transition period. NAB encourages the Commission to rely on market forces and market developments to indicate the appropriate circumstances for mandated simulcasting of the ATV and paired NTSC channels.

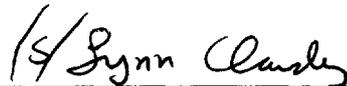
NAB also replies to the unrealistic proposals of LMCC. Further sharing of UHF spectrum by the land mobile service will almost certainly threaten the development of a healthy ATV market. LMCC's proposal should be rejected.

Respectfully submitted,

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August 17, 1992

CERTIFICATE OF SERVICE

I, Brenda Fillman, do hereby certify that a true and correct copy of the foregoing "Reply Comments of the National Association of Broadcasters" was sent by first class mail, this 17th day of August, 1992, to the following:

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