

upon achievement of 10% penetration. Comments of Sony at 54. Indeed, both EIA and Sony expressed the fear that the establishment of a premature conversion deadline "could well cause significant disruption of the near-term NTSC TV receiver market." Comments of EIA at 7. See Comments of Sony at 51.

Even those parties that expressed general support for the Commission's proposed 15-year conversion deadline agreed with the need to revisit the propriety of this date in 1998. See Comments of Zenith at 4. "[B]ecause there are significant uncertainties with respect to ATV development", NTIA urged the Commission to "obtain periodic information updates and review ATV progress prior to certain key points in the schedule, such as the imposition of a simulcasting requirement and the deadline for returning a simulcast channel." NTIA Comments at 4. Such periodic reviews would allow the Commission to adjust the implementation timetables according to the marketplace forces that will control the development of HDTV.

As NTIA correctly points out, while the Commission undoubtedly has "a role in facilitating the development of ATV", it must be kept in mind "that consumers, not the Commission, will ultimately determine the extent of ATV's success in the marketplace." Id. at 5. NTIA goes so far as to recommend that each broadcaster be given the option at the end of the conversion period of returning its HDTV channel and continuing operation in NTSC. Id. at 16-17. This proposal,

by an agency that has gained substantial expertise concerning HDTV through its pioneering work on its policy implications,<sup>11/</sup> confirms the need to exercise caution in setting implementation deadlines. This is especially the case given the current financial straits and long-term structural problems currently afflicting the industry.<sup>12/</sup>

To be sure, some commenters expressed support for a lockstep, accelerated implementation schedule. But virtually all of these advocates are nonbroadcasters driven by self-interest objectives. Some of these, such as some equipment manufacturers -- the stakeholders with by far the largest amount to gain from HDTV -- seek to ride broadcast coattails. They naturally push for hard and fast application and construction deadlines in the hope that this regulatory impetus, whose burden is borne by broadcasters, will drive HDTV set penetration and production equipment demand.<sup>13/</sup> Equipment manufacturers would thus be the beneficiaries of the industrial policy embodied in the Commission's deadlines which

---

<sup>11/</sup> See, e.g., Larry F. Darby, Economic Potential of Advanced Television Products (NTIA 1988).

<sup>12/</sup> A just-released NAB report indicates that 40% of all broadcast television stations lost money last year, with small-market stations suffering the greatest drop in revenues. See Communications Daily at 1-2 (August 7, 1992).

<sup>13/</sup> See Comments of AT&T at 1-4 (supporting simulcasting timetable as well as conversion deadline which should not be revised upon Commission's review in 1998 except upon a "substantial showing"); Comments of Zenith Electronics Corp. at 2, 4 (supporting conversion deadline although agreeing that it should be revisited in 1998).

have the effect of forcing broadcasters to subsidize the risks and costs of HDTV implementation that in a free marketplace would be equally shared with equipment manufacturers, programmers, and other video providers. See Darby Study at 42-44. Their enthusiasm for harsh, rigid deadlines in this context is in notable contrast to their equivocation on the issue of conversion deadlines, where they fear that premature obsolescence of NTSC equipment would disrupt a still-profitable market. It should be obvious that the same factors which create doubt as to the wisdom of establishing a fixed-conversion deadline argue strongly for postponing the establishment of any implementation deadlines at this juncture.

Tellingly, support for accelerated implementation is also sought by those who would benefit from the collapse of broadcast HDTV. Thus, the land mobile interests advocate an implementation schedule that is even harsher, and more unrealistic, than that proposed by the Commission. Comments of LMCC at 4-6; see, supra, pages 8-10. This should be recognized as nothing more than land mobile's continued effort to claim additional broadcast spectrum.

B. The Commission Should Take a Flexible Approach to Simulcasting and Avoid Setting Premature Requirements.

The simulcasting issue well illustrates the dangers of premature action. As articulated in the Joint Broadcaster Comments at 21-23 and in comments filed by Fox, Inc. and MPAA,

broadcast stations handcuffed to replicating NTSC programming will not be able to take full advantage of the capabilities of HDTV, particularly in the early years when penetration of HDTV sets is very low. This in turn will not only handicap broadcast HDTV in competing with potential competitive HDTV services offered over cable, VCR or DBS, it will also suppress consumer interest in this new medium and depress the sales of HDTV receivers, slowing the full conversion to HDTV. See Comments of EIA at 10. For these reasons, and in light of the vast marketplace uncertainties described above, there was strong and broad opposition in the comments to setting a fixed simulcasting schedule at the present time and support for revisiting this issue after several years of real-world experience with HDTV, perhaps in conjunction with the Commission's review of the conversion deadline in 1998. Comments of NTIA at 13; Joint Broadcaster Comments at 21-22; Comments of Fox, Inc. at 3; Comments of MPAA at 7; Comments of EIA at 10.<sup>14/</sup>

The only discordant note comes from broadcasting's chief competition, the cable industry (NCTA), which argues

---

<sup>14/</sup> Despite its recommendation that the Commission defer a final decision on simulcasting requirements until 1998, EIA suggests that "the goal of an expeditious transition can best be achieved by specifying a percentage of the programming hours on the ATV channels that must be of true high-definition quality." Comments of EIA at 11. But surely it is also premature to examine the propriety of imposing such a requirement now, especially given MPAA's skepticism concerning the availability of HDTV programming in the first several years of HDTV implementation. Comments of MPAA at 5.

that Ashbacker v. FCC, 326 U.S. 327 (1945), requires imposition of an immediate and universal simulcasting requirement. Comments of NCTA at 14-16. NCTA's position must be viewed in the light of its patent self-interest. It seems obvious that the cable industry could conceive of no better scenario for broadcast HDTV than having the Commission not only require broadcasters to be first to invest in HDTV equipment and programming but to prohibit them from providing a fully competitive HDTV service. The broadcast industry would thereby assume the brunt of the risk of HDTV's failure and drive down the prices of HDTV production and transmission equipment, but leave the door open for cable to enter the market at any point with the type of innovative productions which have led some to characterize HDTV as an entirely "new" medium.<sup>15/</sup>

In any event, NCTA's argument that simulcasting is somehow required by Ashbacker is simply frivolous. Ashbacker held nothing more than that all parties eligible to apply for

---

<sup>15/</sup> While attempting in general to cloak its arguments in the mantle of the public interest, NCTA does admit to at least one self-interested objective: avoiding a must carry obligation for broadcasters' HDTV channels during the transition period. Comments of NCTA at 6. NCTA apparently believes that it can more easily escape this obligation in a full simulcast environment, perhaps by simply downconverting the broadcast HDTV channel in NTSC subscriber homes. While the must carry question is surely an important issue for both the broadcast and cable industries, and should be addressed by the Commission at a subsequent point in this proceeding, it should be resolved on its own merits. It is hardly an appropriate basis, or even a relevant concern, in determining the simulcast question.

new channels should be given an equal opportunity to apply for them. As the Commission made clear nearly 40 years ago and reaffirmed in this proceeding, there is nothing in the Communications Act or other law which precludes the Commission from establishing reasonable eligibility standards based on the public interest. See United States v. Storer Broadcasting Co., 351 U.S. 192, 202-205 (1956); Further Notice at ¶ 6; Tentative Decision and Further Notice of Inquiry, 3 FCC Rcd 6520, 6537-38 (1988).

In this instance, the Commission has made the sound determination that restricting initial eligibility for HDTV channels to existing broadcasters will further the public interest of seamlessly upgrading the current broadcast system and ensuring the continued existence of a local, universal and free over-the-air system in the advanced television environment. This determination is in no way inconsistent with a decision that, for at least some period of time, a licensee would be permitted to place different programming on the HDTV channel. To the contrary, it may be that only by doing so can the licensee provide a full and competitive HDTV service. The Commission also reasonably determined that NCTA's ostensible fears that NTSC viewers will be disenfranchised are groundless, especially in the first years of HDTV implementation when, given the paucity of HDTV receivers in viewers' homes, broadcasters will have "every incentive to maintain NTSC programming." Further Notice at ¶

61. The Commission's real concern should be in seeing that broadcast stations have the incentive and the means actually to implement HDTV and fulfill the objectives the Commission has announced in this proceeding.

The Commission should consequently reject NCTA's blatantly self-interested and anticompetitive proposal to impose an immediate, 100 percent simulcasting requirements. Rather, the Commission should follow the consensus view of the commenters and revisit the simulcasting issue at the same time it considers adopting a conversion deadline.

#### IV. THE DEVELOPMENT AND IMPLEMENTATION OF HDTV TECHNOLOGY

MSTV commends the Commission for its flexible definition of "construction" whereby broadcasters will be deemed to have constructed their HDTV facilities if they are capable of emitting HDTV signals, regardless of the source of these signals. Further Notice at ¶ 24. MSTV urges the Commission to take a similarly flexible approach in defining the technical and operational parameters for this new service, including allowing stations to begin HDTV broadcasts at low power which can then be increased at their discretion. See Comments of Telemundo Group, Inc. at 3-7. This flexibility may ease the financial and technical difficulties in implementing this new technology, especially in the beginning when more than 1500 stations may be lighting-up their new facilities in the same timeframe. To further ease this burden by providing additional revenues to finance implementation

costs, MSTV supports Fox's proposal to permit ancillary uses of excess data capacity that is not required for HDTV transmissions. Comments of Fox, Inc. at 13-14.

Several commenters raise the possibility of new developments concerning digital compression technology and its application to NTSC services. See Comments of Zenith Electronics Corp. at 6; Comments of Sony at 51; Comments of NCTA at 3 n.3. This technology offers several potential innovations, and the Commission should maintain the flexibility to address these possibilities in its decision-making process at the appropriate point. But doing so now would be premature as this technology is still in the developmental stage. The Commission should instead place its primary focus on developing and implementing the best HDTV system.

Future Images Today ("FIT") has complained that its "FIT system", which uses orthogonality in wave polarizations, has been improperly shut out from the Commission's and Advisory Committee's ATV evaluation process. From the outset, both the Commission and the Advisory Committee have recognized the need to retain sufficient flexibility in this process to consider new ideas and new systems that were not available at the time that proponent systems had to be submitted for certification and testing. Balanced against this legitimate and important consideration has been the need to test full systems with fully developed hardware and to impose some end

date on the testing/evaluation process. We strongly support the procedures and policies that both the Commission and Advisory Committee have established and that continue to be available to FIT and other newcomers. We know of no mistake in their handling of newcomer systems and are confident that both the Commission and the Advisory Committee will deal with such issues in the future (including FIT's claims) fairly, responsibly and consistently with the public interest mandates that they both serve.

We do take note, however, of FIT's argument that, in effect, only ATV systems compatible with existing NTSC receivers are eligible for consideration, because all other HDTV systems (including five of the six that are currently being tested) violate the All-Channel Receiver Act. See Comments of FIT at 7-8. FIT misconstrues current law. The All-Channel Receiver Act imposes no requirements on the Commission, but rather authorizes the Commission to require that television receivers be designed to receive all frequencies allocated by the Commission to television broadcasting. It is well within the Commission's authority and discretion to evaluate and, if it best serves the public, choose an ATV system that is not receivable on current NTSC sets and is transmitted on a separate channel from the NTSC service. Thus, the All-Channel Receiver Act would fully permit any amendment of the Commission's current rule's, such as 47 C.F.R. § 15.117, that may be thought appropriate to accommodate such a system. After

all, the All-Channel Receiver Act was enacted by Congress to address a specific problem -- the absence of television receivers with UHF reception capability. The Act cannot now be used to block a technological advance, not contemplated 30 years ago, that serves the public interest.<sup>16/</sup>

Respectfully submitted,

ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.



Jonathan D. Blake  
Gregory M. Schmidt  
Charles W. Logan  
Covington & Burling  
1201 Pennsylvania Ave., N.W.  
P.O. Box 7566  
Washington, D.C. 20044  
(202) 662-6000

Its Attorneys

Julian L. Shepard  
Vice President &  
General Counsel  
Victor Tawil  
Vice President  
1400 16th Street, N.W.  
Washington, D.C. 20036

August 17, 1992

---

<sup>16/</sup> It is quite possible, however, that amendments to the statutory framework or the Commission's Rules might be desirable to implement the ATV system selected by the Commission, whatever system that might be.