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MINUTES OF IMPLEMENTATION SUBCOMMITTEE/WORKING PARTY POLICY AND REGULATION

Preliminary Draft: Subject to Member Review and Approval

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Meeting of Thursday, June 25, 1992
National Economic Research Associates, Inc.
Washington, D.C.

Summary: Two draft papers on the simulcasting issues were presented and discussed. It was decided that a more concise format would more easily meet the approval of the entire group and would still serve to inform the Subcommittee of important issues for consideration. Brenda Fox will draft a new, pared-down summary of the issues, and will present it to the group for comment. Group members will discuss different approaches to assigning HDTV channel call signs with marketing or other personnel and will report findings at the next meeting.

Chairman Charles Jackson called the meeting to order at 2:00 p.m. Those who attended the meeting were:

Jeff Krauss	Consultant/General Instruments
Molly Pauker	Fox
Mark W. Johnson	CBS
Brenda Fox	DL&A
Loretta Polk	NCTA
Stephanie Stinger	FCC
Gina Harrison	FCC
Colt Whittall	AT&T
Kirsten Pehrsson	NERA
Charles Heuer	Zenith

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The Minutes from the prior meeting were accepted with one minor edit.

There was some discussion of the *ex parte* rules governing the Working Party documents. The issue will be brought to the attention of the Subcommittee at the next meeting for resolution. The question was raised of whether preliminary documents generated for Working Party discussion that are made available to FCC staff are required by *ex parte* rules to be made part of the record in the rulemaking.

Simulcasting Issues. The draft of simulcasting issues, prepared by Molly Pauker, had been distributed for review by the members. Brenda Fox subsequently prepared a revised version of Molly's paper, which she brought for distribution at the meeting. Members were given a brief time to review and compare both versions. There was some discussion about the best approach

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to reconcile the two documents. It was decided that a more terse summary of the issues, itemizing only the broad points, would be a better starting point for discussion and means of obtaining consensus among the group. Such a format would also avoid any possible bias implied by the particular wording used to present the issues. Brenda Fox will prepare the next draft which she will send to Chairman Jackson by July 10th, if possible. Chairman Jackson will then submit the draft to the members for their review prior to the next meeting of the Working Party.

Candidate issues to include in the next draft were discussed. The issues will be divided into practical/policy issues and legal issues.

Practical/policy issues:

1. Protection of embedded investment base by NTSC viewers.
2. Impacts on other (non-broadcast) media.
3. Flexible definition of simulcasting.
3. Stimulation of HDTV services.
4. Reclaiming of the NTSC spectrum.
5. Must-carry/retransmission consent.

Legal issues:

1. Ashbacker concerns. (To the extent HDTV is "new" programming, requirement for comparative hearings.)
2. First Amendment concerns. (To the extent that the same programming is required on different channels, freedom in choosing program content.)

It was requested that a legal test of "content-neutral" be incorporated into the First Amendment discussion. The determination of simulcasting requirements as "content-based" or "content-neutral" will impact the stringency of the First Amendment tests that must be met.

There was a brief discussion of the impact of simulcasting's impact on HDTV program production. Some felt that HDTV programming would be produced to meet demand. However, that demand would be greater if NTSC and HDTV programming could differ in some degree. Otherwise, there would be much more upconversion of NTSC programs instead of creation of HDTV programming. These remarks prompted discussion of the role of the FCC in effecting the shift to HDTV program production.

There was discussion about the impact of simulcasting requirements if the must-carry rules are passed. It was suggested that, under a must-carry regime, cable operators would be required to carry more stations if the program being simulcast were not identical to the NTSC programming. On the other hand, it was pointed out, all broadcasters may not elect for must-carry and instead opt for retransmission consent.

Call Signs. Chairman Jackson raised the issue of assignment of call signs to the HDTV stations. He suggested that members discuss the matter with marketing or other personnel. Gina Harrison remarked that the FCC currently allows free election of call signs unless there is a conflict. She said that the option of using the NTSC call sign with a suffix to denote HDTV was one approach. She said that the FCC would be interested in feedback from the industry on this matter.

The next meeting is tentatively scheduled for July 20th at 2:00 at NERA.

The meeting was adjourned at 3:30 p.m.