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

JUL 17 1992

Federal Communications Commission
Office of the Secretary

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

MM Docket No. 87-268

JOINT BROADCASTER COMMENTS

One-Hundred and One
Broadcast Organizations

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Dated: July 17, 1992

SUMMARY

These comments are submitted on behalf of one-hundred and one organizations ("Broadcasters") representing broadcast licensees and networks, who again join together to demonstrate their unified views on certain critical issues raised in the Second Report and Order/Further Notice of Proposed Rule Making released by the Commission on May 8, 1992 in MM Docket No. 87-268 ("Further Notice").

Broadcasters continue to urge the Commission to adopt an HDTV allotment/assignment plan that pairs specific HDTV and NTSC channels on the basis of current transmitter sites and in accordance with service-area replication, interference prevention and coverage maximization principles. This approach, which has previously received strong support from commenters and the ATV Advisory Committee, will promote collocation of HDTV and NTSC facilities, maximize coverage, and minimize interference. A pairing approach has been reflected in fully developed software currently being used by PS/WP3 of the Advisory Committee to develop paired allotment/assignment tables for each of the HDTV systems being tested under the auspices of the Advisory Committee.

By employing objective "replication/service maximization" principles, Broadcasters' pairing approach is designed to distribute HDTV channels in a way that is fair both to stations and to the audiences they now serve. Under these principles, the HDTV Table of Allotments should seek to

provide an HDTV coverage area for each existing station comparable to the NTSC coverage provided by the station with the greatest coverage in that market, subject to assuring every station minimum HDTV coverage that is at least comparable to its existing coverage. This will provide beneficial channel assignments in the great majority of cases, and also provide an appropriate framework for parties who wish to or need to negotiate alternative arrangements. A channel-pairing approach will also provide the most effective and efficient mechanism for assuring that the Commission's policy of protecting noncommercial allotments (both existing and vacant) in the HDTV world is effectively implemented.

A channel-pairing approach will best serve the Commission's goals of preserving and improving existing broadcast service and implementing broadcast HDTV expeditiously. Broadcasters believe it is far superior to the negotiate/first-to-file/lottery approach proposed in the Further Notice. Because that approach is essentially unrelated to current service, it is inequitable and would arbitrarily jettison spectrum-use gains promised by optimizing channel coverage from existing transmitter sites. It also creates the potential for divergence between a station's NTSC and HDTV coverage areas, thus forcing many stations to apply immediately for their HDTV channels. This will give rise to speculation, arbitrary and inequitable HDTV channel assignments, and contract the two year filing window existing

broadcasters will have to file their applications. The Commission's proposal will also create a hostile and coercive context for intra-market negotiations, making it extremely costly and in many cases impossible for stations to reach a market-wide consensus concerning HDTV channel assignments.

These joint broadcaster comments also address the following issues raised in the Further Notice:

(1) The Further Notice proposes the following ranking among the subgroups of initial eligibles should there be insufficient spectrum in any specific market to assign HDTV channels to all eligible parties: full-service stations and permittees with constructed facilities and program test authority, permittees without constructed facilities, then applicants. Subject to the appropriate inclusion of noncommercial vacant allotments, Broadcasters generally support this proposal, but urge the Commission to take all possible steps to avoid a channel shortfall in the few major markets where that is a possibility.

(2) Broadcasters fully support the Commission's proposal to review in 1998, five years after the adoption of an HDTV standard and table of allotments/assignments, the propriety of any conversion deadline which may be established now. By that date, the Commission should have a much more realistic and accurate assessment of the factors critical to adopting a rational conversion timetable and will still be able to take action in a timeframe which will not unduly

frustrate the Commission's ability to maximize the efficient use of this spectrum.

(3) Broadcasters continue to believe it inappropriate to set a fixed schedule for simulcasting at this juncture given the flexibility stations will need in implementing this new technology and the many unknown variables they will be confronting such as the availability of consumer home receivers, professional station equipment and programming. Whatever simulcasting requirement is ultimately adopted, it should be phased in over a period of time as proposed in the Further Notice. Broadcasters also urge the Commission to define "simulcast" to permit substantial flexibility both in the time of airing and the material included in the simulcast programs.

(4) Broadcasters agree, as proposed in the Further Notice, that it is appropriate to suspend the dual network prohibition to permit the networks to provide their NTSC affiliates a second feed for their HDTV channels or, in the event an NTSC affiliate fails to obtain or utilize an HDTV channel, provide an HDTV feed to another station in the same market.

(5) The Further Notice proposes to require LPTVs to broadcast in HDTV no later than the time full-service stations are required to convert. In this regard, Broadcasters note that any such LPTV conversion to HDTV should be permitted to take place only after sufficient information is gained

concerning the real-world propagation and interference characteristics of broadcasters' HDTV signals. This will provide a basis to ensure that any proposed LPTV or translator station HDTV operations will not cause harmful interference to any full-service co- or adjacent-channel HDTV or NTSC operations, in accordance with the secondary status LPTV and translator stations would retain after converting to HDTV.

(6) Broadcasters support the Commission's decision, at the recommendation of the United States Advanced Television Systems Committee ("ATSC"), to have the Advisory Committee address recent advances in multi-channel audio coding technology and the ability of the five proponent systems to adapt to future developments in this area. Broadcasters also agree that the ATSC and other groups identified in ATSC's early filed comments are appropriate entities to play the critical role of documenting the technical specifications of the winning ATV system.

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JOINT BROADCASTER COMMENTS

The undersigned one-hundred and one local broadcast companies, networks and broadcast trade associations (hereinafter "Broadcasters") hereby comment upon the Second Report and Order/Further Notice of Proposed Rule Making, FCC 92-174, released in the above-captioned docket on May 8, 1992 ("Further Notice").

The Further Notice marks the fifth in a series of Commission actions since 1987 with respect to the development of advanced or high definition television ("HDTV") and its implications for the local broadcast system. Television broadcasters have played an active role at each of these stages. As part of this effort, a wide cross-section of broadcast organizations and companies has joined together on three previous occasions (Petition for Notice of Inquiry, filed on February 13, 1987; Joint Comments, MM Docket No. 87-268, filed November 30, 1988 ("Joint Comments I"); and Joint Comments, MM Docket No. 87-268, filed December 20, 1991 ("Joint Comments II")), to coordinate and convey to the Commission where possible the unified views of the broadcast industry.

Broadcasters now submit joint comments on the issues raised in the Further Notice.

I. ASSIGNMENT OF HDTV CHANNELS

The Further Notice makes the salutary finding "that it is essential that an allotment/assignment process be in place at the time the ATV standard is adopted, and that the allotment and assignment methodology be defined as rapidly as possible." Id. at ¶ 34. This is fully consistent with Broadcasters' requests from the initiation of this proceeding; indeed, a timely distribution of HDTV channels has been among Broadcasters' highest priorities.

Broadcasters remain deeply concerned, however, that the revised procedures tentatively proposed in the Further Notice for assigning to individual broadcasters the HDTV channels allotted to each community will frustrate these objectives. Under the revised procedures, the Commission would first issue another Further Notice this summer containing a sample Table of Allotments, accompanied by "proposed technical and policy principles and scientific and engineering concepts to be used in the allotment of ATV channels." Id. While the specific proposed policies and principles have not yet been released, Broadcasters understand that the plan will be premised upon use of existing NTSC transmitter sites.

After comment on the sample Table and the underlying principles and concepts, the Commission would issue a proposed

"Final Table of Allotments". Existing broadcasters would then be given a period of time to negotiate assignments amongst themselves on either a nationwide or market-by-market basis. In markets where broadcasters are unable to reach agreements, the Commission would use a first-to-file/lottery approach, assigning specific HDTV channels in the order broadcasters apply for them and resolving same-day application conflicts by a "rank-ordered" lottery in which the winner would be "granted its first choice, and the next-ranked applicant its highest choice that would not conflict with the first-ranked applicant, and so on." Further Notice at ¶ 35.

Broadcasters strongly endorse the Commission's adoption of the principle that the allotment process should be premised on use of existing NTSC transmitter sites. They continue to believe, however, that the most expeditious, equitable and spectrum-efficient means of assigning channels is to pair specific HDTV and NTSC channels selected in accordance with service-area replication, interference prevention and coverage maximization principles and to grant stations within a market broad latitude to adopt negotiated alternative plans.

The proposed "negotiate/first-to-file/lottery" scheme, by contrast, would be both inequitable and spectrum inefficient. It would be utterly inconsistent with the

proposed five-year application/construction period.^{1/} It would increase potential speculation in HDTV channels and would create a hostile and inequitable environment for intra-market negotiations. The use of such an approach would prevent the Commission and local stations from assuring that all existing stations have a fair opportunity to provide HDTV service to all of their existing audiences, and in some cases, to make the transition to HDTV at all.

A. A Pairing Approach Based on Replication/Coverage Maximization Principles Offers the Best Method for Assigning HDTV Channels.^{2/}

Consistent with the Commission's objective in this proceeding of preserving and improving existing broadcast service rather than launching a new, separate service, Further Notice at ¶ 5; Tentative Decision and Further Notice of Inquiry, MM Docket No. 87-268, 3 FCC Rcd 6520, 6537 (1988), Broadcasters have urged the Commission to adopt a channel allotment/assignment plan that pairs each existing station with the HDTV channel with optimal coverage from the existing

^{1/} In a series of petitions filed June 22, 1992, several parties have requested that the Commission reconsider various aspects of these application/construction deadlines. See MSTV Petition for Partial Reconsideration; NAB Petition for Partial Reconsideration; Petition for Clarification and Partial Reconsideration of APTS, CPB, and PBS at 13-18; Petition for Reconsideration of Diversified Communications, Maine Radio and Television Company, and Guy Gannett Publishing Company at 4-6.

^{2/} Certain of the issues discussed in this section concern policy and engineering principles which will underlie development of a specific Table of Allotments. These issues will, of course, also be discussed in the context of the Further Notice and draft Table of Allotments to be issued later this summer.

station's current transmitter site. See, e.g., Joint Comments II at 3-11.

Broadcasters' pairing proposal is based on objective "replication/service maximization" principles designed to distribute HDTV channels in a way that is fair both to stations and to the audiences they now serve. As a general matter, under these principles a Table of Allotments should seek to provide an HDTV coverage area for each existing station comparable to the NTSC coverage provided by the station with the greatest coverage in that market, subject to assuring every station minimum HDTV coverage that is at least comparable to its existing NTSC coverage.^{3/} More specifically:

- (1) The allotment/assignment process should start by calculating the existing NTSC coverage of existing stations based on existing facilities (height and power) and existing sites and taking interference into account, as defined by the Commission's Rules.^{4/}

^{3/} The concepts underlying this proposal certainly are not new to the Commission. Virtually identical principles have played important roles in previous proceedings involving the allocation and assignment of spectrum to broadcast operations. See In re Review of the Technical Assignment Criteria for the AM Broadcast Service, MM Docket No. 87-267, 6 FCC Rcd 6273, ¶¶ 99-159 (migration of AM licensees into AM expansion band governed by goals of minimizing interference and maximizing service); In re 9 Khz Channel Spacing for AM Broadcasting, 88 FCC2d 290, ¶ 8 (in proposal to shift AM stations from 10 Khz to 9 Khz channels, "stations on any particular channel would remain together during the reordering so as to maintain existing co-channel and adjacent-channel relationships").

^{4/} The Commission should use techniques to predict coverage and interference that are practical and effectively approximate current actual coverage and interference.

- (2) Without causing new interference to existing NTSC service as defined by the Commission's Rules, existing NTSC stations would then be assigned HDTV channels that would provide coverage areas no smaller than their current NTSC coverage areas.
- (3) Where possible (that is, without causing new interference to existing NTSC service or preventing other existing stations from achieving HDTV coverage comparable to their existing NTSC coverage), existing stations with smaller NTSC coverage areas would be assigned HDTV channels with greater potential coverage areas up to a maximum of the coverage area of the largest NTSC station in the market.^{5/}
- (4) Where spectrum and interference considerations permit, HDTV service areas for all stations should be allowed to expand up to the maximum NTSC noise-limited coverage in each market. This should be accomplished by establishing maximum power and height limitations for HDTV facilities analogous to those of NTSC facilities.
- (5) The Commission should pair proposed HDTV channels with NTSC channels by seeking the best overall "match" between the NTSC coverage area of existing licensees and the coverage areas of the proposed HDTV channels to be allotted to each market. The goal should be two-fold: (i) to provide HDTV coverage comparable to a station's entire current coverage area and (ii) to provide the best correspondence between the size and shape of each station's NTSC coverage area and the size and shape of the proposed HDTV channel's coverage area.^{6/}

^{5/} Where there is a conflict between upgrading the HDTV coverage area of an existing station in one market and upgrading the HDTV coverage of an existing station in a nearby market, various other factors may have to be taken into account, but the general goal should be to maximize total HDTV coverage.

^{6/} If there are situations where not all of a station's NTSC coverage area would be encompassed by any of the proposed HDTV channels available for pairing, the best "match" would be determined by selecting the proposed HDTV channel that would maximize coverage of the station's NTSC coverage area.

Not all stations will be able or desire to locate their HDTV transmitters on the specific site designated by this process. In some instances, e.g., where additional antennas will cause tower loading problems, there will be a need for flexibility to allow stations to change their transmitter sites for their HDTV operations. In all but a handful of cases there will be sufficient flexibility in a site-specific channel pairing plan to accommodate these special needs. The few remaining cases can be resolved largely through negotiations among licensees conducted after the proposed Table of Allotments/Assignments is issued.

This pairing approach will promote the colocation of HDTV and NTSC facilities, maximize coverage, and minimize interference. It will also provide an appropriate framework or baseline for negotiated amendments to the Table of Allotments by assuring that all stations will, at a minimum, be able to optimize service to their existing populations. Because each party to the negotiation will be assured continued service to its existing coverage area, further negotiations will properly be focused on the means by which all the negotiating stations involved can improve their coverage areas or otherwise enhance their service.

The Further Notice acknowledged that "[m]ost commenting parties endorse an allotment/assignment approach that matches specific ATV channels with existing NTSC allotments". Id. at ¶ 32. It is worth noting that the

commenting parties supporting this approach include not only Broadcasters, a group which encompasses the vast majority of all directly affected stations, commercial and noncommercial, network affiliate and independent, in markets of all sizes, but also the Commission's ATV Advisory Committee, which represents virtually every other potentially affected sector of the industry. ATV Advisory Committee, Fifth Interim Report at 12.

Indeed, as acknowledged in the Further Notice, at ¶ 34, the Advisory Committee and interested parties have undertaken substantial efforts to work with the Commission to develop fully elaborated software that would implement the above channel-pairing approach. This software is based on close coordination with the Commission's staff and would be wholly consistent with the work of the Commission's staff on allotment/assignment issues. This software is being used by PS/WP3 of the Advisory Committee to develop allotment/assignment tables for all of the HDTV systems being tested under the aegis of the Commission's Advisory Committee. This is simply to assure the Commission that the pairing approach being urged by Broadcasters is not merely a wish list or set of general principles; those principles are embodied in a specific, concrete computer model which is being used to generate paired allotment/assignment tables.

Despite the strong support for a pairing approach, the Further Notice expresses a "reluctance" to adopt such a

channel-pairing approach. Further Notice at ¶ 35, n.91. Broadcasters submit that this reluctance is grounded in concerns which are more hypothetical than real in most instances and, in any event, which are outweighed by the values furthered by a channel-pairing plan.

Thus, for example, the Further Notice postulates that there will be "significant variations" in HDTV service areas and expresses the fear that there will not be an "acceptable degree of equivalency" in HDTV channels to satisfy all eligibles. Id. Putting aside the inherent ambiguity in the meanings of "significant" and "acceptable", if the proponent systems perform anywhere near the levels they claim to be able to achieve, a substantial number of stations will be able to serve larger areas and greater populations than they serve today from their existing sites. Because of this fact, under a channel-pairing plan 1) the coverage disparities of existing stations will be substantially reduced, if not eliminated, and 2) most existing stations will have substantial flexibility to relocate from their existing locations should they desire to do so.^{2/}

^{2/} Another variation on this theme is the concern in the Further Notice that the "principle of existing service would require that a licensee with the smallest existing NTSC service be paired with the least attractive ATV channel." Further Notice at n.91. First, this is not necessarily true. Broadcasters are proposing that HDTV channel assignments be optimized initially by site. It is entirely possible that a "disadvantaged" NTSC station may be at a site which results in it receiving a "better" HDTV channel than at least some other stations in its market and perhaps even most. In any event,

(continued...)

It is not, of course, assured that every single station will be satisfied; a few stations may find whatever differences or disparities that still remain to be "significant" or "unacceptable", and it is beyond question that a few stations will, as the Further Notice fears, have "their own reasons" other than coverage to prefer one channel over another.^{8/} It is for this very reason that the Commission should permit properly structured and timed intra-market licensee negotiations. See Joint Comments II at 11. But Broadcasters submit that whatever unsatisfied differences and individual station "reasons" may survive this process, satisfying them cannot, on balance, outweigh the benefits of a channel-pairing plan in furthering the overriding policy objectives of assuring the uninterrupted provision of local broadcast service to all members of the public during the transition to HDTV and in expediting the implementation of broadcast HDTV.

^{7/}(...continued)

even if it were true, employing the principles outlined above, supra, pp. 5-6, to take full advantage of the transmission techniques, it is clear that there will be a much smaller differential between the "most" and "least" attractive HDTV stations in a market than exists among NTSC stations today.

^{8/} The Further Notice speculates that stations may desire to have HDTV channels which are more proximate in frequency to their NTSC channels or which would facilitate the use of antennas common with those of other stations in the market. Further Notice at n.91. It is unclear whether either of these concerns has any technical or marketplace significance in the context of the new HDTV transmission schemes, particularly digital techniques, but they are in any event issues of far less import than the values furthered by a channel-pairing plan.

B. The Negotiate/First-to-File/Lottery Approach Is Arbitrary, Inequitable and Counterproductive.

The revised "negotiate/first-to-file/lottery" proposal will not satisfy the Commission's fundamental objectives in this proceeding. First, it is arbitrary and inequitable. Unlike the channel-pairing plan which seeks to replicate and expand existing broadcast service, the first-to-file approach is essentially unrelated to current service. It is Broadcasters' understanding that the Commission intends to develop its draft Table of Allotments based on the utilization of existing station transmitter sites, a step which is essential to assuring that there are sufficient HDTV channels to accommodate all eligibles in at least some major markets and to optimizing total coverage. Given the sometimes significant geographic separations between existing stations in the same market,^{9/} it simply makes no sense to optimize channel coverage based on an existing site and then not assign that channel to a station on that site.

Second, by creating the potential for divergence between a station's NTSC and HDTV coverage areas, it would force many stations to apply immediately for their HDTV channels. The pressure to apply early would arise whenever there was even one other channel allotted to the same community which failed to cover the station's entire current

^{9/} As Broadcasters have observed, stations serving the same market may have NTSC transmitter sites which are separated by as much as 80 kilometers. See Joint Comments II at 6.

service area. No station could take the risk that the licensees of other channels would apply instead for "their" channel. This would contract the five-year application/construction period contemplated in the Further Notice, at ¶¶ 22-23, to three years plus whatever time it takes to process the applications and, for applications which were mutually exclusive, conduct a lottery.^{10/} Stations would thus be forced to construct at a time when equipment is at its most expensive and audiences at their lowest. This substantially raises the risk of failure and/or abandonment of their rights to proceed, in either case slowing and even frustrating the introduction of HDTV.

Third, a first-to-file approach will lead to viewer confusion and frustration in coverage areas where an existing NTSC station is not matched with an overlapping HDTV channel. Consumers outside the service overlap areas will have less incentive to purchase HDTV receivers, preferring the NTSC signal they have watched for years to spending thousands of dollars to receive unfamiliar programming on the HDTV channel

^{10/} The construction period will begin to run from the actual time that a construction permit is awarded, which should take place within a short time after an application for an HDTV channel is filed. Further Notice at ¶ 25. Broadcasters support the Commission's definition of "construction" for HDTV implementation set forth in the Further Notice. Under this definition, the construction requirement would be satisfied by the "capability of emitting ATV signals, regardless of the source of these signals (e.g., local origination, pass-through of a network signal, or other signal)." Id. at ¶ 24.

assigned to a station new to their area. This too would delay the implementation of HDTV.

Fourth, the revised procedures create a hostile and coercive context for intra-market licensee negotiations. Bargaining positions would be dictated by the plain fact that all existing NTSC operators in a community would have the same right to apply for, and the same odds of winning, a particular HDTV channel, regardless of whether it matched that station's existing NTSC coverage or that of another station in the market. In combination with the enormous disparities in licensee investment and facilities, this would create great incentive for some to coerce a pay-off or other benefit by threatening to apply for a channel that under a pairing approach would be best matched with another station. The added costs of these payoffs could further slow and impede the implementation of HDTV.

Moreover, the methodology proposed in the Further Notice would eliminate the first-to-file requirement only where there is universal agreement among all licensees in a market. Further Notice at ¶ 35. Securing the full length of the application/ construction period for any licensee in a market consequently would require satisfying the most obdurate and unreasonable hold-out. It should be obvious that consensus under such circumstances will either be elusive or achieved only at the cost of fairness and equity. The result

surely will expand and intensify controversy regarding channel assignments and make negotiations all the more difficult.

In addition, the first-to-file approach does not provide a mechanism for implementing the Commission's policy decision to protect either existing noncommercial licensees or vacant noncommercial allotments. See Further Notice at ¶ 37. As public television representatives noted in their Petition for Clarification and Partial Reconsideration, supra, n.1, the Commission has neither proposed a procedure to ensure that HDTV channels will be reserved exclusively for noncommercial use nor addressed the timing of such reservations. Many existing noncommercial licensees, for financial or other reasons, will not be able to apply for an HDTV channel within the two-year protected filing window, and there will be no applicants to file for paired channels for vacant allotments during the filing window. Yet the Commission has outlined no procedure for how these allotments will be paired. The use of the channel-pairing plan is the most effective and efficient method of assuring that the Commission's policy of protecting noncommercial allotments (both existing and vacant) in the HDTV world is effectively implemented.

For all these reasons, Broadcasters again urge the Commission to adopt instead the site-specific channel-pairing plan outlined above.

II. OTHER ISSUES

A. Ranking in the Event of a Spectrum Shortfall

Based on the nearly unanimous support of the commenting parties, the Commission determined that it will limit initial eligibility for HDTV channels to "existing broadcasters". Further Notice at ¶ 8. "Existing broadcasters" in turn have been defined as (1) all full-service television broadcast station licensees; (2) permittees authorized as of the date of adoption of the Notice of Proposed Rule Making, 6 FCC Rcd 7024 (1991) ("Notice"); and (3) all parties with applications for a construction permit on file as of the date of adoption of the Notice who are ultimately awarded full-service television broadcast station licenses. Further Notice at ¶ 8.

Broadcasters continue to support this restriction on initial licensee eligibility. They would reiterate, however, that consistent with the Commission's policy decision, see Further Notice at ¶ 37, vacant noncommercial allotments also should be paired with HDTV channels in the initial distribution of channels. See also Joint Comments II, at 8-10.

The Further Notice seeks comment upon the ranking among the subgroups of initial eligibles should there be insufficient spectrum in any specific market to assign HDTV channels to all eligible parties. Id. The Further Notice proposes to rank the parties, "according to their degree of

experience as NTSC broadcasters", i.e., in roughly the order recited above. Id. at ¶¶ 8-9. The sole exception would be to add to the first and highest priority subgroup those permittees with constructed facilities and program test authority. Id. at ¶ 9.

Subject to the appropriate inclusion of noncommercial vacant allotments, Broadcasters support this proposal. The proposed ranking is indeed consistent with the premise of restricting initial eligibility to those who would bring HDTV to the public "in the most expeditious and nondisruptive manner." Id. at ¶¶ 6, 8. The Further Notice was clearly correct in finding that according first-priority status to permittees without constructed facilities would be unwarranted. Id. at n.19 & ¶ 10. These eligibles will generally have not demonstrated the same degree of experience or commitment or the availability of the same resources as existing licensees, nor do they have the same presumptive stake in the maintenance of existing service to the public.

The Further Notice proposes to defer a determination as to how to rank eligibles within the highest priority grouping. Id. at ¶ 9 & n.22. Consistent with their prior comments, Broadcasters believe that an informed decision as to shortfall selection techniques cannot be made until the Commission has a better idea of just how great a shortfall is likely to occur. Joint Comments II at 10-11.

It remains crucial, however, that the Commission take all possible steps to avoid a channel shortfall in the few major markets where that is a realistic possibility. The single most important step is, of course, the adoption of a site-specific, channel-pairing assignment plan, an approach that will be more spectrum efficient than the first-to-file/lottery option also presently contemplated.^{11/}

The Commission must, in addition, adhere firmly to its plan to displace LPTV and translator stations as well as eliminate vacant commercial allotments.^{12/} Further Notice at ¶¶ 37, 39-40. The Commission is clearly correct in its refusal "to factor in LPTV displacement considerations in making ATV assignments" Id. at ¶ 42. As the Further

^{11/} In addition, the Commission must not hesitate in disposing of the various proposals that have been made for allocations of portions of the UHF band for different services. See, e.g., In re Applications of Radio Telecom and Technology, Inc. and Tele-Communications, Inc., Gen. Docket 90-314, PP-69, PP-75 (petitions requesting pioneer's preference for proposals to establish PCS using UHF spectrum); Petition for Review of Radio Telecom and Technology, Inc., FCC Ref. 31030/EQU/2-1; DOR-6/6/90 (requesting Commission review of denial of waiver request to operate two-way wireless digital system in 407-806 and/or 216-220 Mhz band); Notice of Inquiry, Gen. Docket No. 90-357 (released August 21, 1990; seeking comment on whether UHF band could be used for DAR services).

^{12/} Broadcasters support the Commission's decision (1) to use vacant noncommercial allotments for HDTV only where there is no feasible alternative for assigning an HDTV channel to an existing commercial or noncommercial broadcaster; and (2) to use such HDTV allotments, and channels that would be paired with such allotments, only as a last resort where that channel or allotment will be necessary to provide the first noncommercial full-service Grade B coverage to a community. Further Notice at ¶ 37.

Notice recognizes, it will be a "challenge" to provide all existing broadcasters an HDTV channel in congested markets. Id. at ¶ 39. For this reason, it has been recognized from the outset of this proceeding that it will not be possible to protect these secondary services.^{13/} See Advanced Television Systems and Their Impact on the Existing Television Broadcasting Service, RM-5811, Mimeo No. 4074, slip op. at 3 n.4 (July 17, 1987) (existing and newly granted LPTV and translator stations "will not restrict Commission options" in implementing HDTV).

Regardless of the outcome of the HDTV system testing now underway, these steps will greatly reduce, and perhaps even entirely eliminate, the number of markets without sufficient HDTV channels to accommodate all existing broadcasters and thus substantially reduce the significance of optimizing the technique for ranking existing licensees.

^{13/} The Commission should consequently give no weight to an ex parte presentation made by Island Broadcasting Co. ("Island") in a letter dated April 30, 1992 to Thomas P. Stanley, Chief Engineer in the Office of Engineering and Technology. Island's letter presents a possible table of allotments that purports to assign HDTV channels to all 18 broadcast licensees and permittees in the New York market without displacing any licensed LPTV or translator stations in that market. The lesson Island claims to draw from this exercise is that there "appears to be no technical basis for totally ignoring, destroying, or displacing" LPTV stations in designing an HDTV table of allotments. Island's proposed table, however, is completely unrealistic in that it ignores the impact that assignment of HDTV channels in New York will have on adjacent communities such as Philadelphia, Boston, and Hartford. The Commission should hold firm to its longstanding position that LPTVs are a secondary service and will have to give way to broadcast stations in the implementation of HDTV.