

resources necessary to finance local stations' conversion to expensive new ATV facilities.^{36/} The transition to ATV presents by far the greatest challenge the broadcast industry has faced since its birth. The course of this transition will proceed more or less smoothly depending on how early, how certainly, how fairly, and with how much disruption to existing service ATV channels are assigned. The Commission will contribute to the timely construction of ATV facilities, financed by the steady flow of income dependent on existing viewers, by producing an allotment/assignment table that settles the expectations of stations early on.

Universal Reach and Local Commitment

One of the most frequently lauded characteristics of the National Information Infrastructure is that it promises to reach into every business, home, and public institution. The performance of terrestrial broadcast stations will be key in fulfilling this promise. For this is what they, and only they, have always done -- provided universal, local, and free

^{36/} See Broadcasters Caucus White Paper on Digital Television Technology and the NII. December 13, 1993. According to the Commission, "[i]n view of the expected expense of implementing ATV service and the need to develop associated programming and production resources, we also believe it is important to minimize the impact of the implementation of ATV on other aspects of the industry's structure." Second Further Notice at ¶10.

entertainment and information services to the entire public.^{37/} Digital technology will allow broadcasters to carry these same public interest features to novel and improved services -- information, entertainment, interactive, multi-media, and highly particularized services, sometimes in conjunction with computer applications.^{38/} In bringing these new terrestrial broadcast services onto the Superhighway, the Commission should allot/assign ATV channels so as to enable broadcasters to continue their coverage and service commitments to their viewers.^{39/} The ATV

^{37/} In finding that the must-carry provisions served important government interests, the Supreme Court discussed the abiding importance of free broadcast service in the multichannel environment: "the importance of local broadcasting outlets 'can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation's population.'" *Turner Broadcasting System, Inc. v. FCC*, No. 93-44, slip op. at 39 (U.S. June 27, 1994) (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177 (1968)).

^{38/} The Commission has recognized the relevance of these characteristics in the development of allotment and assignment principles. Referring to the "established system of privately owned broadcast stations that have an obligation to serve the public interest and in furtherance of that objective transmit news, information and entertainment programs of a local, regional and national nature[,]" the Commission stated that "initiating an ATV system within this framework 'will uniquely benefit the public.'" Second Further Notice at ¶ 4.

^{39/} "Broadcasters remain the principal source of free, universally available electronic information in the United States, and it is important to ensure full participation by that industry in the NII." Testimony of Larry Irving, Assistant Secretary of Commerce for Communications and Information and Director of the National Telecommunications
(continued...)

allotment/assignment process must, therefore, respect that local service, by striving to replicate existing service areas, maximize ATV service areas, and minimize interference to new and existing services.

The approach suggested here honors broadcasters' commitment to the public they currently serve by ensuring that their service areas survive the transition to ATV largely intact.^{40/} Alternatively, assigning ATV channels through a random pairing, lottery or auction approach would result in distribution of television spectrum on the basis of luck, speed or speculation, without regard to particular and longstanding relationships between the public and its local stations.

Equity

The replication/maximization method of pairing ATV channels to site specific NTSC stations has the additional virtue of reducing the coverage disparities that now exist

^{39/} (...continued)

Information Administration, Before the House Subcommittee on Economic and Commercial Law, Committee on the Judiciary, January 26, 1994.

^{40/} It is the Commission's policy to recognize continuity as well as quantity of service as a valid goal in distributing spectrum. "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another." Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd. 7094 (1990) at ¶ 19.

among stations.^{41/} The vast majority of stations would retain almost all of their existing coverage area and many, particularly smaller NTSC stations, would receive substantially larger ATV coverage areas.^{42/}

Any non-engineering approach to assigning ATV channels, such as assignment by lottery or first-come-first-served, opens the door to inequitable reshuffling of television spectrum assets that could exacerbate present inequities, to the ultimate detriment of viewers.^{43/} Such an approach also would transform the inauguration of ATV service from what was intended -- an opportunity for broadcasters to upgrade present facilities for the benefit of their existing consumers -- to a showering of windfall gains and losses, regardless of the legitimate expectations of broadcasters or, even more importantly, their viewers.

^{41/} See Second Further Notice at ¶ 18; Joint Comments IV at 16.

^{42/} Replication/maximization strategy allows stations with smaller NTSC coverage areas to be assigned ATV channels with larger coverage areas where doing so would not interfere with existing NTSC service or the ability of stations to match their existing coverage areas with comparable ATV coverage areas. See Letter from Association for Maximum Service Television, Inc., et al to Chairman Alfred C. Sikes, March 10, 1992 at p.3; Joint Comments III at 5-6; and Joint Comments IV at 16.

^{43/} See Joint Comments III at 11-14.

IV. ADJUSTMENTS TO THE TABLE AND MODEL

The above proposal accommodates changes between the time of this submission and the adoption of the table and thereafter. Changes in both the computer model and its specific output should be entertained, bearing in mind that some reassignments will necessitate very few adjustments table-wide while others, particularly in congested areas, may have ripple effects throughout the table. Thus all changes, and their consequences for the assignments and performance of other stations, need to be considered carefully.

Systemic Changes

Based on years of elaborate calculations and ATV field testing, the Broadcasters have selected the replication/maximization principles discussed above as foundation stones for the preliminary table. It is certain that the assignments these principles yield will change as data is updated and Canadian ATV allotments are considered. In addition, our plan may stimulate proposals for systemic, but probably relatively minor, changes in the underlying principles, the priority they have been given, or the parameters and guidelines used to apply them.

For example, it may be suggested that replication should yield to other values once a certain replication goal has been met. Also, research and evaluation is now being conducted on the effectiveness of cross-polarization in the

transmission and reception of ATV television signals. If this technology proves to be desirable, the model is fully capable of producing an alternative table using such technology as a planning factor. These are options that the public should discuss prior to the adoption of a table and some may in fact yield worthwhile improvements.

Therefore, we urge the Commission to consider these and other refinements to our proposed assignment methodology so that public debate may proceed on the full range of ideas. Any proposed systemic adjustments should, of course, be objective and scientifically accurate. It will then be possible to evaluate these proposed refinements to determine whether they yield a higher degree of licensee and public satisfaction.

Ad-hoc Changes

Some proposed or necessary changes to the preliminary table will involve discrete, rather than system-wide changes. Because no table, no matter what its principles, can satisfy all licensees or best serve the public in every instance, we have designed adjustment mechanisms to gratify individual licensee needs for channel, height, power, and location changes as circumstances warrant, both before and after a table is adopted. The Broadcasters' software program may be asked to effect changes in the ATV channels assigned to stations in the same community or in nearby communities.

Undoubtedly, changes will also be necessary to keep pace with station changes and newly pending applications.

The Broadcasters' computer model used the Commission's data base, which is over two years old. Station X may have since moved its facilities to a new site, at which a different ATV channel might better achieve the public interest objectives of the Broadcasters' proposal. The Broadcasters anticipate that the allotment/assignment table actually adopted will be based on data reflecting the actual licensed facilities of each station as of the date of adoption, yielding replication to the highest degree possible. Future site moves, collocation, adjacent-channel and land mobile interference concerns, minimum ATV receiver standards, changes in transmission and reception methods, improvements in home antenna technology, Canadian ATV allotments, channel positioning,^{44/} and other technical considerations might justify other changes both before and after a table is adopted.^{45/} In addition, licensees may agree to exchange

^{44/} Broadcasters will want to work with the Electronics Industry Association and equipment manufacturers to deal with the issue of "rearranging" channel positions by, for example, designing tuning devices that pair the NTSC and ATV channels for the same station.

^{45/} One of these requested changes may be to accommodate translator stations. Many broadcasters, including many educational broadcasters, use such stations to provide coverage within their A and B coverage contours. Translators are particularly critical in areas shadowed by mountainous terrain, and often provide the only television service to such
(continued...)

assigned channels along with the height, power, and location parameters attached to those channels.

The Broadcasters' computer model should be used to identify the optimal alternative ATV channel in these circumstances, taking into account the effect of such proposed changes on other ATV station service areas in the same and nearby communities and the potential for interference to existing service. In this way individual stations, the Commission staff and the public would have objective and highly accurate and detailed information with which to evaluate proposed changes.

No doubt, the dynamism of demographics and the marketplace will prompt licensees to seek further changes after any table is adopted, as well. Stations may wish to move or alter their facilities, either NTSC or ATV, and any spectrum management plan should permit licensees as much freedom as possible. Because of the extraordinarily packed

^{45/}(...continued)

areas. Congress has specifically encouraged educational broadcasters to serve all of the nation's viewers and educational broadcasters have operated translator stations as a financially efficient means of satisfying that directive. The Broadcasters' model does not account for ATV to NTSC interference to translators, nor does it allocate ATV spectrum for ETV translators. As soon as possible, the Broadcasters intend to evaluate how and to what extent existing NTSC translator service, particularly educational service, can be accommodated on existing or new NTSC channels and on new ATV channels. The Broadcasters will provide the Commission with information learned from those studies and, if appropriate, amend the proposed allotment/assignment plan accordingly.

nature of the television spectrum after the insertion of approximately 1700 new ATV allotments alongside 1700 existing NTSC stations, the process of evaluating and accommodating proposed changes will be far more complex and technically challenging than changes in the NTSC environment, where proposals are evaluated on a case-by-case basis, sometimes even in Commission hearings. Such a cumbersome and litigious process would be entirely inadequate in the new ATV/NTSC environment.

For the future, the Commission should use the objective engineering principles underlying the Broadcasters' computer model as a basis for evaluating and policing proposed changes in station channel assignments and facilities parameters. A system of assignment coordinating committees, funded by licensee contributions, should evaluate proposals for post-assignment changes to the table using these objective principles. The assignment coordinators should then make recommendations to the Commission about how to dispose of these proposals, or at least provide the Commission with the coverage/interference data necessary to make these decisions.^{46/}

^{46/} The FCC may rely on the coordination committees Broadcasters propose without subjecting such committees to the requirements of the Federal Advisory Committee Act, 5 U.S.C.App.2 (inter alia making meetings open and documents available to the public). This is because the committees will be formed privately rather than by the government, will

(continued...)

Such a process has been effectively used for nearly two decades in the case of auxiliary broadcast operations^{47/} and for nearly four decades in the case of land mobile radio services.^{48/} The process, marked by a high degree of scientific integrity, has worked greatly to reduce controversy and facilitate the fair and efficient allocation of spectrum while conserving Commission resources.^{49/}

^{46/} (...continued)

receive no federal funds, will not be amenable to strict management by agency officials and, therefore, will not be "established or utilized" by an agency. See 5 U.S.C.App.2 at § 3(2). See also Public Citizen v. Dep't. of Justice, 491 U.S. 440, 457 (1989) (ABA Committee which advises president on judicial appointments is not subject to FACA); Washington Legal Foundation v. U.S. Sentencing Comm., 17 F.3d 1446 (D.C. Cir. 1994) (advisory group to Sentencing Commission is not subject to FACA).

^{47/} See In re Shared Use of Broadcast Auxiliary Facilities, 93 FCC 2d 570 (1983) at ¶43 ("local frequency coordination remains the most efficient process for licensees to select appropriate television auxiliary frequencies"). See also In re Frequency Coordination Procedures for Broadcast Auxiliary Services, 1 FCC Rcd. 292 (1986).

^{48/} There are over one million private land mobile licenses for over 25 different radio services or categories. Every year, frequency coordinators process thousands of applications by considering the applicant's specialized requirements and the environment in which it seeks to operate. The coordinators then recommend frequencies to the Commission, thus sparing applicants with fewer resources the task of conducting their own field studies. Through their review and dispute resolution responsibilities, the coordinators handle controversies which would otherwise tie up Commission resources and personnel.

^{49/} See Frequency Coordination in the Private Land Mobile Radio Services, Notice of Proposed Rule Making, 4 FCC Rcd. 6325 (1989). In this proceeding the Commission proposed competitive alternatives to coexist with the frequency

(continued...)

The past success and continuing importance of this process, particularly in congested bands, prompted Congress to amend the Communications Act in 1982 to affirm the FCC's authority to use frequency coordinators in managing the increasingly crowded private land mobile radio services spectrum.^{50/} It was clear to Congress then and remains true today that the technically sound recommendations of a committee representing the users of a given service help the FCC to administer that service more equitably, efficiently, and expeditiously.^{51/}

The coordination process could be used as effectively in the television broadcast arena to resolve licensees' disputes arising out of requests for channel re-

^{49/} (...continued)

coordinators to make fee regulation unnecessary. The Commission declined to further restructure the coordination process and praised the work of the frequency coordinators which had "reduced the administrative burden on [the FCC's] licensing staff and helped to prevent delays that could hinder the authorization of radio systems vital to the physical and economic well-being of the nation. In addition, the coordinators have been responsible for resolving post-licensing conflicts, thus reducing demands on our resources and freeing the staff to process licenses more expeditiously." Id. at ¶ 10.

^{50/} See The Communications Amendments Act of 1982, Pub. L. No. 97-259, 96 Stat. 1087, September 13, 1982 (codified at 47 U.S.C. § 332).

^{51/} See Conference Report No. 97-765, 97th Cong., 2nd Sess., August 19, 1982 at 53, reprinted in 1982 U.S.C.C.A.N. 2237, 2297. The Commission subsequently reaffirmed the importance of frequency coordination committees in Frequency Coordination in the Private Land Mobile Radio Services, 103 FCC 2d 1093 (1986).

assignments or facility changes. Access to state-of-the-art technology, through the coordinators, would assist the Commission in evaluating reasonable licensee requests while preserving the integrity of both ATV and NTSC service areas at minimal expense. The Commission would be able to monitor the assignment coordinators' performance and responsiveness to the public through relatively simple licensee surveys and other mechanisms.^{52/}

V. ADDITIONAL POINTS

The Broadcasters strongly believe that the merits of this proposal must be debated over the coming months so that the Commission may finalize an ATV table at the same time that it adopts ATV standards. Accordingly, we ask that the Commission issue a further notice of proposed rulemaking, which includes within its scope the process the Broadcasters here endorse, the preliminary allotment/assignment table which that process has yielded, and the proposed mechanisms for evaluating proposed changes to the table both before and after it is adopted.

ATV Receiver Standards

Additionally, we request that the Commission solicit comment on an ancillary issue that is important to the success of the advanced television allotment/assignment process -- ATV

^{52/} See e.g. Private Radio Bureau Frequency Coordinator Error Rate Study, 1994 FCC LEXIS 2757 (June 22, 1994).

receiver standards.^{53/} If an ATV allotment/assignment table assumes certain ATV performance characteristics but receivers are manufactured to under-perform, the entire process will have been undermined and the public, as well as broadcasters, will suffer. Because the Broadcasters' allotment/assignment approach reflects Grand Alliance system performance, there is every reason why equipment manufacturers should be required to live up to those standards. If for cost or other reasons this is not practical, now is the time to find this out and to adjust ATV allotment/assignment principles accordingly.

International Compatibility

Finally, the Broadcasters recognize the need to adapt any ATV allotment/assignment table so as to protect against possible interference to future Canadian ATV stations and to a smaller number of future Mexican ATV television stations.^{54/} The Broadcasters' approach has protected Canadian and Mexican NTSC stations but cannot provide for ATV stations in those countries because we do not know on what channels they will operate. Only the Federal government can effectively coordinate with the Canadian and Mexican governments to find out what these ATV assignments will be and

^{53/} The Communications Act gives the FCC the authority to regulate the operation of radio frequency devices and home electronic equipment to reduce interference. See 47 U.S.C. § 302a(a).

^{54/} This, too, is an issue Broadcasters have raised before. See, e.g., Joint Comments II at 32.

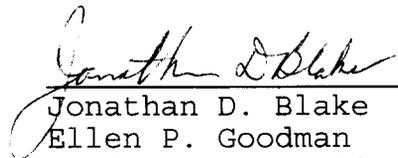
where they will be located. But the Broadcasters' computer model is fully capable of adapting the United States table to accommodate this information once it has been ascertained by the Commission through official channels. We urge the Commission to expedite this process.

WHEREFORE, the Commission should take the steps recommended above and proceed to issue a further notice of proposed rulemaking on ATV allotment/assignment issues:

- The allotment/assignment process, plan and principles the Broadcasters propose;
- The preliminary allotment/assignment table submitted to implement the Broadcasters' proposal;
- The adjustment mechanisms the Broadcasters propose, including both pre-adoption ad-hoc and systemic adjustments and industry staffed and funded assignment coordination committees to evaluate proposed post-adoption changes to the table;
- The advisability and content of minimum ATV receiver standards.

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APPENDIX A

Description of the Broadcasters' Model

The following describes how the Broadcasters' computer model was crafted to produce a table that would achieve the following goals of:

- (a) providing an ATV channel for each current NTSC station;
- (b) providing an ATV service area that is at least comparable to the service area of the NTSC station with which it is paired and permitting stations with smaller NTSC service areas to expand their ATV service areas out to the largest service areas in the market, provided there are no adverse interference effects of doing so;
- (c) minimizing the interference to existing NTSC service.

I. CREATING POOL OF ATV CHANNELS FOR EACH AREA.

The model's first step was to select from all the available channels for ATV transmission, those channels that were eligible for each area based on the goals stated above and the interference and other criteria described below.

VHF and UHF. Since ATV will be operating in the same spectrum bands as the NTSC service, nearly 1700 ATV stations must be "squeezed in" among the same number of existing NTSC stations without causing unacceptable interference to existing stations or the new ATV channels.^{1/} The successful execution of this challenge requires the use of both VHF and UHF channels. The model selects eligible channels for each market without regard to whether a VHF or UHF channel is being considered.

Available Channels. The possible channels for ATV in each area include those channels that are not allotted for NTSC in that area because they would cause objectionable interference to existing NTSC stations and those channels in the area that are allotted for NTSC stations but are not used.

^{1/} The ATV assignment problem is so large and complex as to be almost unmanageable. Theoretically, there are close to an infinite number of ways (approximately 67^{1400} possible solutions) to assign ATV channels to the existing 1700 or so NTSC stations.

Co-Channel Spacing. The Broadcasters' model, in selecting channels for a given area, prefers those eligible channels having larger co-channel separation distances to NTSC stations and other ATV allotments in order to minimize interference (ATV-to-NTSC and ATV-to-ATV).^{2/}

The co-channel separation parameter cannot be set to the largest distance that will permit all existing NTSC stations to be paired with ATV channels because an ATV transmitter power level which would support an ATV coverage area comparable to the existing NTSC Grade B contour could create interference within the service areas of other NTSC stations.

Congested Markets First. In the less congested markets, there will be a larger number of eligible ATV channels than there are NTSC stations. In the more congested markets and their outlying areas, there may be the same number of eligible ATV channels as there are NTSC stations. Given these relative constraints, it became apparent from the outset that the model would best achieve the goals of accommodation, replication, and maximization by assigning channels first in those core markets where channel congestion is the worst and then moving out to the less congested markets where there are fewer constraints.

Thus, for example, since there are available only the same number of ATV channels for the New York City market as there are existing NTSC stations in that market, it made sense for the model to start with the assumption that those channels would be used in New York City, rather than in Scranton, Bridgeport or Utica.

^{2/} Even though the ATV system has been designed to minimize interference to NTSC service and in turn to be relatively immune to interference from other stations (both NTSC and ATV), the geographic distribution of NTSC channels across the country and the potential for interference between stations make it very difficult to devise a nationwide ATV allotment/assignment plan that avoids all interference among the channels assigned. The goal is to assign the ATV channels in such a way that any ATV interference into NTSC falls, to the maximum extent possible, in areas already affected by NTSC interference.