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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Advanced Television Systems	)	
and Their Impact Upon	)	MM Docket No. 87-268
Existing Television Broadcast Service	)	

To: The Commission

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COMMENTS OF SENIORS' ADVOCATE

Seniors' Advocate hereby submits its comments in response to the Commission's *Fourth Further Notice of Proposed Rule Making And Third Notice of Inquiry* ("*FNPRM*") in the captioned proceeding. Seniors' Advocate is a non-profit organization that promotes legislation and regulation designed to protect the rights and well-being of senior citizens, and monitors proposed changes to extant legislative or regulatory structures with potentially detrimental impact to senior citizens. For the reasons given below, we believe the tentative framework that the Commission has set forth in the *FNPRM* is fraught with potentially disastrous repercussions for our members and for fixed-income senior citizens throughout the Nation.

While we are sensitive to the Commission's concern that broadcasters be permitted to transition to digital technology without immediate loss of service to the NTSC-viewing public, we believe it is critical that appropriate restrictions be placed upon broadcasters' use of the ATV channel. We fear that the enticing prospects of digital conversion -- for all its potential benefits -- could result in a rapid, irreversible shift away from universal, free, over-the-air television. The multi-channel capability of a digital system and the ancillary uses of the spectrum outlined by the Commission in the *FNPRM*, introduce for the first time into the

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world of traditional television broadcasting the possibility of subscription revenue. As Commissioner Quello has warned, this raises the specter of the Commission's allowing the model of free, universal television to become antiquated. *See Separate Statement of Commissioner James H. Quello*, appended to *FNPRM*.

For this reason, we urge the Commission to take two vital steps in this proceeding. *First*, it should require that ATV spectrum be used *exclusively* for free, over-the-air broadcasting. Broadcasters should not be permitted to use any of this capacity for nonbroadcast subscription service. Otherwise, there will necessarily be some members of the viewing public -- many of whom are senior citizens -- who will be denied the lifeline of television. For those whose fixed monthly incomes do not permit the luxury of cable and other multichannel subscription services, it is not overstating the point to say that free, over-the-air television attains the significance of a public utility. The Commission should therefore take every precaution to ensure that universal access to this vital resource is not jeopardized. Unless the FCC takes a firm stand on this central issue by deciding that ATV spectrum will be set aside exclusively for free, over-the-air broadcasting, we fear that the prospect of greater revenues from subscription service will gradually erode the Federal government's historical commitment to basic, universally accessible television service.

In addition to this significant policy consideration, we believe that allowing broadcasters to engage in subscription television service without opening that prospect to competitors -- as the Commission proposes -- would violate the legal principle enunciated in *Ashbacker Radio Corp. v FCC*, 326 U.S. 327 (1945). The Commission's tentative conclusion in the *FNPRM* at footnote 31 that "no *Ashbacker* rights would be triggered because we are defining the category

of eligible applicants rather than rejecting one *bona fide* applicant without comparing it to others," seems to us to be semantically disingenuous. There is a difference between enforcing initial eligibility thresholds such as legal or technical requirements, and precluding new applications from parties who are in every way eligible applicants under the Commission's rules. The instant context is wholly unlike that in play in *United States v. Storer Broadcasting*, 351 U.S. 192 (1956), invoked by the FCC in defense of its view that *Ashbacker* does not affect this proceeding. In *Storer*, the Commission's existing multiple ownership rules were the bar to an applicant's right to have its application processed. Here, however, no existing rule, legal or technical requirement, or policy of any sort lawfully precludes competing applicants -- *if* the Commission were to offer current television licensees the opportunity to enter the subscription, multichannel television industry. That step would constitute much *more* than the mere modification of a license to accommodate evolving technology while maintaining the essential nature of the service for which the license was originally awarded. Rather, it would remove existing television licensees into an entirely new service legitimately open to competitors. This step would, accordingly, trigger *Ashbacker* issues.

Second, current regulatory requirements imposed upon broadcasters should not be compromised in any fashion. For decades, broadcasters have been subject to a number of regulatory standards designed to promote the public interest. These requirements -- including those relating to children's programming, access for candidates for elective office, and responsiveness to contemporary issues within the broadcaster's community -- have become a vital feature of the broadcaster's stewardship. This *quid pro quo* -- based on the enduring model of the broadcaster as trustee -- has not become *passe*. A television license is an

enormously powerful instrument for potential good or harm. Senior citizens, who as a demographic group spend a disproportionately high percentage of their time watching television, deserve the continuing benefits of fairly crafted regulatory policies which ensure that broadcasters' public interest obligations remain undisturbed. For example, broadcasters should continue to be required to air programming responsive to local community needs and interests, and programming designed to serve the educational needs of children. The Commission's political time rules should continue to be operative, as should the indecency rules recently upheld by the courts. *Action for Children's Television v. FCC*, No. 93-1091 (D.C. Ci. June 30, 1995).

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For these reasons, we urge the FCC to conclude that ATV spectrum be used exclusively for free, over-the-air broadcasting, and that current public interest standards governing the broadcast industry not be repealed.

Respectfully submitted,

SENIORS' ADVOCATE

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