



November 20, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Re: Fourth Further Notice of Proposed Rulemaking, MM Docket No. 87-268

Dear Mr. Caton:

UVTV (formerly United Video) respectfully submits the attached comments for consideration in the above-captioned proceeding. Please find enclosed an original and four copies pursuant to the Commission's rules and one copy to be date stamped and returned by our messenger.

If you should have any questions about this filing, please don't hesitate to contact me.

Sincerely,


Kim Koontz Bayliss
Vice President Government Relations

KKB/mh
Enclosures

cc: Chairman Reed Hundt
Commissioner James Quello
Commissioner Andrew Barrett
Commissioner Susan Ness
Commissioner Rachelle Chong
International Transcription Services, Inc.

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

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

MM Docket No. 87-268

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FOURTH FURTHER NOTICE OF PROPOSED RULE MAKING
AND
THIRD NOTICE OF INQUIRY

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Dated: November 20, 1995

proceeding, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry, FCC 95-2137 (released October 11, 1995) (hereinafter Fourth Further Notice), raises several issues of concern to UVTV: (1) how and to what extent the Cable Act's "must-carry" rules should extend to transmissions over the additional 6 MHz of spectrum intended to be used for High Definition Television (HDTV); (2) how and to what extent retransmission consent should extend to those transmissions; and (3) whether or not the Commission should impose technical modifications on retransmitters of broadcast signals during the transition from analog to digital television.

In general, UVTV believes that the Commission should avoid a definitive resolution of these issues at this time because there is still a great deal of uncertainty about how digital technology will be deployed and accepted by consumers and the costs associated with such deployment. The issues involving the transition to digital television should be decided in the marketplace, not through regulatory proceedings which cannot consider economic reality. Therefore, the Commission should withhold adopting hard-and-fast rules in this area. The Commission can always come back at a later date, without prejudice to any party, when the conversion to digital television is further along to resolve issues in a more definitive and reasonable manner.

Must Carry Rules for Digital Television

The Commission requests comments on the applicability of the must carry rules, 47 C.F.R. § 76.56, to broadcast transmissions using the Advanced Television (ATV) spectrum. As the Commission notes in the Fourth Further Notice, this would not really be an issue if broadcasters were required to simulcast on the ATV spectrum. Fourth Further Notice ¶ 82. However, the Commission's reconsideration of its simulcast requirement and recent technological developments which would permit broadcasters to

use the ATV spectrum for multiple Standard Television (SDTV) program services, make the must carry issue an important one.

UVTV urges the Commission to adopt a rule which limits must carry obligations to a single video transmission comprising the broadcaster's primary video stream. The primary video stream should consist of the programming available on the traditional NTSC broadcast signal. Other non-related program services transmitted via the ATV spectrum and other non-video ancillary services should not be subject to must carry requirements at this time.

UVTV is concerned that the Commission might adopt a rule which requires cable operators to carry all non-duplicative broadcast transmissions from a single broadcaster based on the assumption that cable operators would have vastly expanded their channel capacity through compression technology. Such an assumption is misplaced. It is too early in the conversion from analog to digital transmission of video programming to predict with any accuracy when enough cable systems will be utilizing compression to increase channel capacity to accommodate increased carriage requirements.

Cable operators could face a quadrupling of their must carry obligations if they are required to carry all SDTV program services transmitted via ATV spectrum. If so, the typical must carry obligation for an operator could easily exceed the statutory limit of one-third of that operators' activated channel capacity. The operator would then be forced to drop non-broadcast program networks from its channel line-up. This result clearly upsets the "balance" between broadcasters and cable operators that Congress attempted to achieve in enacting new must carry requirements. H.R. Rep. No. 628, 102d Cong., 2d Sess. at 61, 66 (1992) (justifying must carry obligations on grounds that cable operators would have at least two-thirds of their capacity to program at their discretion.) Moreover, this statutory limitation on use of the cable operators' capacity for must carry signals was a major factor relied upon by the courts in upholding the constitutionality of the must carry rules.

Displacement of non-broadcast program networks would be particularly unfair if the additional program services offered by the broadcaster compete with the non-broadcast program networks already available. When broadcasters transmit other video programming over the ATV spectrum they are acting no differently than any other cable programming network. Accordingly, they should be treated no differently than any other network and be required to negotiate with cable operators for carriage.

A requirement that cable operators carry all SDTV transmissions is far afield from the original purpose of must carry. The Commission should evaluate the appropriateness of must carry for additional program services in light of changes in the video programming distribution marketplace. UVTV believes it is too early to conclude that cable operators will act as a bottleneck to prevent subscribers from having access to the other program services being offered by broadcasters. Actual competition from DBS, MMDS, and the threat of competition from other technologies, such as telcos, will provide broadcasters with many outlets for their additional programming services.

Consequently, the Commission should refrain from adopting a must carry requirement that forces cable operators to carry every additional program service transmitted over the ATV spectrum.

Program-related material transmitted by broadcasters over the ATV spectrum is a tougher issue. UVTV can foresee circumstances where the additional broadcast is sufficiently related to the primary video stream so as to justify its transmission by the Commission under the current rules relating to line 21 of the Vertical Blanking Interval (VBI), 47 C.F.R. § 76.62, and perhaps require its transmission under copyright law. See WGN Continental Broadcasting Co. v. United Video, Inc., 693 F.2d 622 (7th Cir. 1982) (holding that deletion of program related material transmitted via VBI which was intended to be seen by the same viewers at the same time as the underlying program is copyright infringement.)

On the other hand, the program related material in this instance is different from the program related material that is the subject of either the Commission's rules regarding

Line 21 of the VBI or the WGN case. In both of those circumstances the program related material is physically a part of the primary broadcast signal and the cable operator or retransmitter needs no additional transmission resources to retransmit it. By contrast, in the ATV context the program related material will be a separate transmission and therefore require additional costs and facilities for the cable operator and superstation carriers such as UVTV. Consequently, the Commission should not set a definitive rule in this area until the exact nature of the additional program related broadcasts is known and the costs to cable operators, satellite carriers and their subscribers is carefully considered.

Retransmission Consent for Digital Television

UVTV's interest in how the Commission resolves retransmission consent is specific but critical to the continued availability of superstations and network signals in underserved areas. The 1992 Cable Act exempts from retransmission consent users of broadcast signals that were available by a satellite carrier or common carrier on May 1, 1991. 47 U.S.C. § 325(b)(1). As the satellite carrier for several superstations, the exemption permits UVTV to continue to uplink superstation signals and transmit them to cable operators and other facilities-based multichannel video providers. During consideration of the 1992 Cable Act, the Senate recognized that an exemption from retransmission consent was necessary "to avoid sudden disruption to established relationships" between superstations and satellite carriers. S. Rep. No. 92, 102d Cong., 1st Sess. at 27 (1992). In adopting retransmission consent regulations governing the transition from analog to digital broadcasting, the Commission should ensure that the exemption contained in the current law applies in the ATV context.

Without commenting on whether retransmission consent should apply to all program services a broadcaster might transmit via the ATV spectrum or to the primary video stream only, UVTV urges the Commission to exempt users of broadcast signals that were available in the NTSC format by satellite carrier or common carrier on May 1, 1991. In addition, the Commission should clarify that the exemption from retransmission

consent for users of broadcast signals is limited to the distribution of the broadcast signal outside the broadcaster's local market.

Technology Issues

In the Fourth Further Notice the Commission also requests comment on several issues relating to the technical aspects of the transition from analog to digital delivery of broadcast signals as well as the costs associated with deploying the technology necessary to accommodate digital transmission. Fourth Further Notice ¶ 84. UVTV strongly believes that it is premature for the Commission to make any determination regarding how an ATV signal should be retransmitted by a cable operator or satellite carrier at this time.

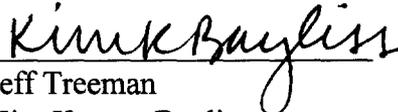
It is impossible to predict with any accuracy when compression technology will be readily and economically available to permit the digital transmission of broadcast signals. For UVTV, a requirement that superstation signals be transmitted digitally would require equipment that is not available for this kind of commercial operation on an economical basis. It does not make sense for UVTV to incur the expense of digital transmission unless a sufficient number of consumers have the electronic equipment necessary to receive television signals digitally and enough cable operators have sufficient digital transmission capacity. The transition from analog to digital will occur when it makes economic sense to all of the parties involved. Therefore, the wise course of action is to avoid setting specific rules based on assumptions about what the marketplace will do and instead wait to see how digital broadcasting is deployed.

Any regulations the Commission establishes in this area should be based on consumers' acceptance of the equipment needed to receive digital television signals and the cost to satellite carriers and cable operators of converting to an all digital transmission system. Since these factors are not now known, the Commission should not adopt specific transmission requirements at this time.

Conclusion

The speed at which the transition from analog to digital broadcasting will occur depends upon many factors: availability of consumer electronic equipment, consumer and broadcaster acceptance of digital broadcasts, consumer and industry willingness to purchase new electronic equipment, and utilization of compression technology. The Commission should withhold from setting final rules regarding many aspects of this proceeding until the use of digital technology becomes more widespread and more is known about how broadcasters intend to use the additional ATV spectrum. Any rules the Commission sets today by necessity can only be based on assumptions or predictions about how the transition to digital broadcasting will progress. In all likelihood these rules will be outdated by the time the transition to digital broadcasting actually occurs. The wiser course is for the Commission to draft only those rules necessary to clarify the most pressing points during the transition period, but to revisit most major issues in a later proceeding when the base of knowledge about digital broadcasting is more fully developed.

Respectfully submitted,


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