

viewers from disenfranchisement. By the same token, the fact that ATV sets are likely to have the capability of displaying NTSC signals, because the majority of viewers will rely on the NTSC service in the early years of the transition, means that these same viewers will have no disincentive to purchase ATV sets for fear of losing their NTSC programming. Despite these realities, the Fourth NPRM proposes to require licensees to simulcast their NTSC programming on their ATV channels, primarily to serve the Commission's second goal stated above. See Id., at 17-18.

The tension between the Commission's first and second simulcast goals is the tension that complicates the transition process in general: a speedy transition requires ATV programming that makes the investment in ATV receivers worthwhile, but the transition will not occur, or will occur at a devastating price to the public, if it prematurely diminishes the public's NTSC service. Broadcasters share the Commission's desire to propel the transition to digital television quickly without disenfranchising viewers. We believe that much simulcasting of NTSC programming on the ATV channel will happen naturally because the ability of broadcasters to attract viewers to their ATV channel will depend on their ability to put popular programming on that channel. The most likely source for such programming, both because of its demonstrated popularity and the fact that it is readily available, is the NTSC programming. Our commitment to HDTV and the natural incentives promoting the simulcast of NTSC programming should induce consumers to invest in ATV sets.

Broadcasters have differing views as to the necessity for a simulcasting requirement and many will be expressing those views in individual comments which they are filing. However, we all agree that if the Commission finds it necessary to impose

simulcasting requirements, it should provide for periodic checks and adjustments, as it has for other features of its ATV regulatory regime.

C. ANCILLARY AND SUPPLEMENTARY SERVICES

Broadcasters believe that the market and their own expertise will ensure that the primary use of the ATV channel will be to provide free, universal, over-the-air and state-of-the-art television to the public. This belief stems from present experience, since broadcasters' current primary use of their spectrum is for broadcasting purposes. Alongside this primary use, however, broadcasters have long been permitted to use the excess capacity of the NTSC channel for ancillary data transmissions such as program guides.^{21/} Such services, though, have never assumed a very large place in broadcasters' business plans or practices. Our core business is broad appeal television programming.

The ATV bitstream will provide many new opportunities to add value to television broadcasts and otherwise serve the public. It is too early to say what these uses will be, how remunerative they will be, and far too early for the Commission to set about constricting their development. Instead, the Commission should permit such services to begin to develop and watch to see the choices the market supports. The Commission then would be equipped to revisit the advisability of limiting the use of the ATV channel during the course of the transition.

^{21/} See 47 C.F.R. §§ 73.681, 73.682 (regulating uses of the television vertical blanking interval); In the Matter of Digital Data Transmission Within the Video Portion of Television Broadcast Station Transmissions, MM Docket No. 95-42, Notice of Proposed Rulemaking, released May 2, 1995 (seeking comment on rules regarding the transmission of ancillary digital data within the active video portion of the NTSC signal); and 47 C.F.R. § 73.319 (regulating FM radio subcarrier uses).

Broadcasters oppose limitations on the provision of ancillary and supplementary services, except those that are contained in the U.S. House of Representatives' "Communications Act of 1995," which forbids services that derogate "any advanced television services"^{22/} and in the U.S. Senate's "Telecommunications Competition and Deregulation Act of 1995,"^{23/} which forbids services that prevent the provision of at least one ATV service free to the public. By the same token, we do not object to the levy of fees for ancillary and supplementary services that are provided on a subscription basis or the general authority to collect such fees that is granted to the Commission in the Senate and House legislation.^{24/}

How these fees should be collected may present a difficult question which the Commission is wise to pursue in this rule making. Whatever procedure is adopted must spare the Commission and industry from intrusive, time consuming, and market skewing audits of the channel. Perhaps one way to levy fees would be to charge broadcasters a percentage of the revenue earned from subscription ancillary and supplementary services. If adopted, however, the percentage should not be so high that it distorts market choices by robbing broadcasters of incentives to provide popular services that are also remunerative. Moreover, consistent with the Senate legislation, the fees paid over a given license period should be comparable to what competitors in similar services have paid for spectrum put to similar uses. If the Commission chooses to implement a revenue-based fee collection procedure, it should streamline its data

^{22/} H.R. 1555, §336(b), 104th Cong., 1st Sess. (1995).

^{23/} S. 652, § 206(a)(1)(A), 104th Cong., 1st Sess. (1995).

^{24/} S. 652, § 206(a)(2), 104th Cong., 1st Sess. (1995); H.R. 1555, §336(d), 104th Cong., 1st Sess. (1995).

submission requirements and ensure that all financial data is kept confidential. The disclosure of proprietary information could well derail business plans and inhibit the development of services that the public desires.

Alternatively, a "bitstream monitor" could be another neutral and potentially even simpler mechanism, provided that it can be inexpensively installed, easily operated, and administered without significant data compilation or sifting. In the absence of such technology, broadcasters should not be required to undertake the prodigious task of metering the channel capacity devoted to ancillary and supplementary services per month, week, or, at worst, daypart. Broadcasters' experience in complying with the requirement that they charge no more than the lowest unit rate for political advertisements has proven how taxing it can be, particularly for smaller stations, to determine the meaning of a "unit" in a complex broadcast day programmed and marketed quite diversely. Working out the meaning of a capacity or bitstream "unit" would be vastly more complicated and probably unmanageable without the affordable technology to simplify the process. As with so many of the issues in this proceeding, whatever procedures the Commission adopts now may well require reexamination once we know more about the types of services that are offered and how the payment of fees has fared.

D. PUBLIC INTEREST OBLIGATIONS

Broadcasters are fully committed to sustaining and enriching their role in American society as the only providers of free, locally-based, universally available news and entertainment video programming. Digital advances will allow us to improve our programming in the public interest, improve the quality of the images our viewers receive, and open the doors for more experimentation on a local level of which only broadcasting is capable. In this spirit, Broadcasters support the continued application of public interest obligations that attach to the analog NTSC service throughout the transition period and beyond to an all-ATV replacement service. The existing obligations should attach to the licensee and programming obligations should be satisfied on both the NTSC and ATV channels during the transition, but there is no need for the imposition of additional obligations on the transitional channel.

Programming-related obligations such as children's programming,^{25/} programming responsive to community needs and interests,^{26/} political advertising,^{27/} and indecent programming requirements^{28/} should remain attached to the licensee. The licensee should be obliged to continue to fulfill these requirements on the NTSC channel and in the broadcast programming providing on the ATV channel. If, as we predict, the NTSC channel will be simulcast to a large extent on at least part of the ATV channel, public interest programming will continue to be available to the entire audience the

^{25/} See 47 U.S.C. § 303(b), 47 C.F.R. § 73.671.

^{26/} See 47 C.F.R. § 73.3526(a)(8),(9).

^{27/} See 47 U.S.C. §§ 312 (a)(7), 315; 47 C.F.R. §§ 73.1944, 73.1941.

^{28/} See 18 U.S.C. § 1464.

broadcaster serves -- both the NTSC audience receiving NTSC service and the ATV audience receiving the same service in higher-quality format through new digital sets. To the extent that broadcasters do not simulcast, they should be expected to perform their public interest obligations on the ATV channel in whole or in part with non-simulcast material. Non-programming related obligations (e.g., EEO compliance) should not be affected by the transition.

IV. TRANSITION ISSUES

A. TIMETABLE

We believe that the principle that should govern the timetable for giveback is clear -- the giveback date should be the soonest possible time that does not disenfranchise NTSC viewers. The Commission's primary task is to introduce the necessary mechanisms to ensure that the public is exposed to ATV in a way that facilitates a rapid transition period. Little beyond that is needed because of broadcasters' economic incentive to hasten the transition of their operations to a single channel. We believe that the transition proposals we have made, including commitments to HDTV minimums, all-mode receivers and must carry (see below), will ensure that the transition period is brought to a rapid conclusion.

Broadcasters have a long history of initiating innovations such as color and stereo without regulatory pressure. They also have every incentive to move their operations from NTSC to ATV as quickly as possible, with or without a date certain deadline and whether that deadline is set for 15 years, as the Commission proposed in 1992,^{29/} or sooner as it now investigates. See Fourth NPRM, at 21. As the Fourth

^{29/} See Second Report and Order, at 3353-54.

NPRM notes, broadcasters' competitors, such as DBS, cable, wireless cable, and telephone companies, are already on their way to making the transition to digital. Any lag in terrestrial television's transition may mean loss of viewers, resulting in reduced advertising revenue. Moreover, broadcasters will want to get out from under the additional costs (with no apparent revenue upside) of operating two transmission facilities.^{30/}

Of course, much of the pace of transition is not within broadcasters' control. It will depend on, among other things, the widespread availability of both reasonably-priced transmission and other ATV equipment and ATV receiving devices. Movement in the consumer electronics market, in turn, will depend in part on general economic conditions and interest rates. The availability of financing for station licensees to construct ATV facilities will be another independent factor that will hinge on lenders' assessment of their rate of return, which itself largely depends on some of the variables discussed above. The most important factor of all, and the most uncertain, is consumer acceptance of the new services, which will depend largely on the product the creative program community provides.

Given all this uncertainty, it would be folly to set an immutable transition date at this time. Even the enterprise of setting self-enforcing benchmarks at this point is highly speculative in the absence of market experience. There are simply too many unknowns that will need to be factored into any such decision -- the cost and availability of digital sets, the cost and availability of convertors, and ATV penetration levels both in terms of households and sets. In our judgment, it would be far wiser for the

^{30/} See Joint Comments II, at 25-26.

Commission to defer a decision on a giveback date than to attempt now to predict the pace of technological development and public acceptance of ATV or to attempt now to decide at what level of ATV penetration the public interest in bringing the transition period to an end warrants cutting off NTSC service to those households least able to afford making the change.

If objective benchmarks tolling the end of the transition are set, we urge both the utmost flexibility and consideration for that part of the public that transitions last. Any benchmark that is set should have two basic features. First, it should measure both the total number of sets and the total number of households capable of displaying ATV services, including HDTV.^{31/} Second, consideration should be given to tolling the transition market-by-market to avoid penalizing those viewers concentrated in areas with low penetration rates. Broadcasters recognize that application of a market-by-market approach will necessarily be limited by the interest in recovering nationwide contiguous blocks of spectrum.

Once a benchmark is selected, it should be reviewed when it ostensibly has been reached. The adequacy of, for example, a x% ATV set penetration cut-off depends in part on the constituency of the y% of the sets that have not been converted. If, for example, a significant portion of the households with the NTSC-only sets rely exclusively on them to receive television and cannot afford upgrades to ATV sets, cutting off NTSC service to those sets may have particularly harsh effects and the Commission might wish to reconsider the benchmark.

^{31/} Gauging set, in addition to household, penetration makes sense because NTSC will remain an important "second set" service even after a household has invested in one ATV set. It may be appropriate to take into account other factors as well.

B. SPECTRUM RECOVERY

Two features of the end of the transition are quite clear: broadcasters will eventually vacate one channel and the Commission will re-assign one or more contiguous spectrum blocks.^{32/} With respect to channel retention, we understand that the Commission's plan to recapture contiguous spectrum will have some impact on the extent to which broadcasters can choose which of the NTSC or ATV channel assignments to retain for ATV transmissions. However, in those cases where the NTSC channel is within the boundaries of the post-transition dedicated broadcast spectrum, such a choice will be possible and should be permitted even before the entire transition is completed, consistent with interference protection. In fact, a rigid policy of forcing broadcasters to give up the NTSC, rather than the ATV, channel would frustrate the goal of efficient spectrum use. Therefore, we urge the Commission to refrain from deciding this issue at this time.

If, in addition to giving up one of its channels, a licensee is required to move to an entirely new channel to make room for another user of the vacated spectrum, the new user should be required to pay for the licensee's move. This is a bare minimum given all the other penalties broadcasters in this particular situation will face. Such a policy also is consistent with recent precedent in the Personal Communications Service

^{32/} To this end, Broadcasters are working on the possibility of refining the Table of Allotments/Assignments submitted to the Commission in January to favor ATV assignments in the VHF band and the middle and lower UHF bands. Broadcasters will share this information with the Commission and hope to work together to arrive at a final table that maximizes and replicates NTSC coverage, minimizes interference, accounts for terrain, and makes the most effective use of the spectrum.

In response to the Commission's Third Notice of Inquiry in this docket, we continue to reject the view that the UHF band alone is the best place for broadcasting. See, e.g., Joint Comments IV, at 19-25.

(PCS) proceeding in which auction winners have been required to fund incumbent microwave users' relocation. In the absence of such a policy, the unlucky broadcasters that are displaced may well face yet another round of station conversion costs to operate on the new assignment. These broadcasters would be unfairly and randomly penalized and the public's service from these stations would be severely diminished due to viewer confusion. Moreover, the prospect of such a penalty likely would provoke substantial challenges to initial assignments at the edges of the allocated spectrum and might delay the implementation of ATV.

Finally, the allure of ultimately auctioning the giveback channels must not distort the Commission's resolution of the giveback issues. It should not motivate the Commission to force a premature giveback at the cost of disenfranchising needy NTSC viewers. Nor should it motivate the Commission to craft initial ATV allotment/assignment decisions or subsequent repacking plans that do not maximally serve the public interest. Congress made clear in the 1993 Budget Reconciliation Act that public policy goals trump revenue raising objectives. The auction legislation provides that, "in making a decision . . . to assign a band of frequencies to [an auction-eligible] use . . . the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection." 47 U.S.C. § 309(j)(7)(A).^{33/}

^{33/} The House Committee initially reporting the spectrum-auction bill stated that,

the FCC cannot base an allocation decision . . . solely or predominantly on the expectation of more revenues. The Committee intends the FCC to make its decisions based on sound communications policy pursuant to the Communications Act. The Commission is not a collection agency of the U.S. Government, and should not be

V. OTHER ISSUES

A. MUST CARRY AND RETRANSMISSION CONSENT

The Commission has raised a number of questions with regard to cable carriage of broadcast signals in an ATV world. Broadcasters believe that the answers to those questions can be found in the rationale and principles of the Cable Television Consumer Protection and Competition Act of 1992.^{34/} The purposes of the 1992 Cable Act are to preserve the public's free over-the-air television service and to preclude cable operators from acting as anti-competitive gatekeepers.^{35/} The Commission can further such objectives throughout the transition to ATV and beyond only by applying the existing must carry regime to broadcast programming on the ATV channel. In short, the Commission should require cable systems to carry local stations' NTSC and ATV broadcast signals (which would exclude ancillary and supplementary subscription services). The underlying policy of the 1992 Cable Act requires such a course. Moreover, by following such a course, the Commission would boost the market

influenced by budgetary considerations. This paragraph is designed to insulate the FCC's communications policy decisions from budgetary pressures, and clarifies that important communications policy objectives should not be sacrificed in the interest of maximizing revenues from auctions.

H.R. Rep. No. 111, 103rd Cong., 2d Sess. 258 (1993). See also Committee on the Budget, S. Print 36, 103rd Cong., 1st Sess. 65, 72 (1993) ("The FCC is not permitted to consider potential revenues from auctions in allocating spectrum for a general use Potential revenues from competitive bidding are not to affect the FCC's decisions to allocate spectrum.").

^{34/} P.L. 102-385, 106 Stat. 1460, codified at 47 U.S.C. § 521 et seq. (the "1992 Cable Act").

^{35/} See H.R. Rep. No. 862, 102d Cong., 2d Sess. 75 (1992).

penetration of the new technology and accelerate the channel give-back, thereby fulfilling both Congress' goal of safeguarding free television from the cable bottleneck and the Commission's goal of a swift transition.

The 1992 Cable Act provides that, "[a]t such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards." 47 U.S.C. § 614(b)(4)(B). According to the Conference Report accompanying the 1992 Cable Act, the purpose of requiring the Commission to reassess the must carry regime in light of the ATV transition was to ensure that HDTV signals would be carried "in accordance with the objectives" of section 614 of the Communications Act. This section, which imposes must carry/retransmission consent obligations on cable systems, reflects Congress' policy judgment that carriage of local broadcast signals serves the public interest.^{36/}

The transition to ATV does nothing to weaken the original must carry rationale embraced by Congress -- that the 66% of the television households receiving their television service via cable should have access to the local terrestrial broadcast signals and that the 34% without cable should not have their free television service weakened by any anti-competitive actions of the cable systems acting as gatekeeper.^{37/} If anything, the advent of ATV provides even greater justification for these rules. The

^{36/} See H.R. Rep. No. 862, 102d Cong., 2nd Sess. 67 (1992).

^{37/} See S. Rep. No. 92, 102d Cong., 1st Sess. 58 (1991).

assurance that the majority of its audience will have access to the ATV signal will encourage broadcasters to make the necessary capital expenditures for ATV. Moreover, it will provide lenders with the confidence they need that there will be an audience for the technology they help finance. These assurances will speed the transition and hasten the date of return of the NTSC spectrum.

We agree with the Commission that there should be no change in the must carry and retransmission consent procedure for the NTSC channel. See Fourth NPRM, at 31. In addition, that procedure should be duplicated with respect to the ATV channel, with licensees entitled to make a separate and independent must carry/retransmission consent election for each channel.^{38/} Cable systems are generally increasing their capacity through system upgrades. Moreover, the implementation of digital compression technologies promises that cable systems will be able to vastly increase the number of programs they transmit. Accordingly, our suggestion that must carry/retransmission consent obligations be imposed with respect to local ATV channel broadcasts on an ongoing basis is certainly technically practical without overburdening a given cable system.^{39/} This carriage will ensure that programming presented in satisfaction of broadcasters' public interest obligations will be accessible to all viewers. It will also

^{38/} As stated above, the must carry requirement need not apply to ancillary or supplementary subscription services carried on the ATV channel.

^{39/} The ATV standard incorporates an NTSC compression mode and a high data rate transmission mode specifically designed for cable, which can easily carry the compressed NTSC signal and an HDTV program within a single 6 MHz cable channel. In fact, the conversion to digital compression and transmission technology will allow a standard 6 MHz cable channel to carry the equivalent of at least 8 NTSC/SDTV or 2 HDTV services. Thus, the Notice is not correct in suggesting, at para. 82, that five cable channels might be required to carry an NTSC channel and four multicast SDTV channels. In fact, all could be accommodated in one 6 MHz cable channel.

expedite the transition by insuring that the 66% of viewers who obtain broadcast programming through cable have access to all broadcast ATV programming, including HDTV programming.

The form and channel placement of cable carriage will be as important in the transition and ATV environments as they are in today's. The general principle governing carriage format should be that each cable system carry the ATV broadcast signal in its original format so that the public can display it to the full extent of the signal's capabilities. The principle of no material degradation^{40/} should remain in force to ensure that HDTV programming is always carried in its HDTV format. The same market forces working to speed broadcasters' transitions will act similarly on cable systems, ensuring that they will be able to meet their obligations. To provide reasonable relief to smaller systems, the Commission may wish to adopt phase-in rules or policies for cable carriage of ATV channels but such rules or policies should also recognize cable's important role in working with broadcasters to avail all Americans of the benefits of digital technology.

As for channel identification, the governing principle should be that the broadcaster should have the ability to maintain its identity over time and across the carriers of its signal. This means that the broadcast channel's "position" should be transparent to the viewer, regardless of the frequency on which that channel is carried or the cable channel on which it is carried. With respect to cable, broadcasters should have the option of electing the channel on which the ATV channel is carried regardless of whether the broadcaster is transmitting HDTV or ATV multicasts which occupy the

^{40/} 47 U.S.C. § 614(b)(4)(A).

same broadcast channel. Moreover, it is important to ensure that all broadcast channels are grouped together on the dial (or the video programming guide) and that each station retains its channel identity from cable system to cable system. As video options proliferate, channel landmarks will become ever more important. Broadcasters' retention of channel identity is often critical to their retention of viewers over cable and this will be as true for the ATV channel as for the NTSC one. However, because each broadcaster will be associated with two channels, it should be permitted to elect to have those channels paired (e.g., 7A and 7B) on the cable system. Such an arrangement may prove least confusing for a public that is trying to find its way through a thicket of new channels and would not pose undue hardship for the cable system. The regulator's most essential role in this area is to prohibit anti-competitive behavior that would scatter and effectively hide broadcast channels.^{41/}

Channel identity concerns will intensify if some broadcasters are required to vacate their NTSC channel and move from one ATV channel to another after the transition. The possibility of such relocations makes it important at the outset to insist that channel identity not be tied to the ATV frequency. Whether reception is over-the-air or otherwise, viewers should be able to go to the same place to locate a broadcast signal even if the licensee has had to change frequency or has been "displaced" from its original channel assignment.

^{41/} Cf. the rationale for the channel positioning requirement of the 1992 Cable Act contained in the Senate Report to that Act: "Unless local stations are guaranteed channel stability, cable systems have the incentive to reposition their signals, which compete with the cable system for viewers and advertising, to channels which are less desirable and which viewers may have a hard time locating." S. Rep. No. 92, 102d Cong., 1st Sess. 61 (1991).

B. INTEROPERABILITY

Pressing broadcasters to revamp their facilities for ATV is only one part of the task of upgrading free, over-the-air broadcasting. If television set manufacturers continue to produce NTSC sets, some consumers who are ready to replace their sets will be unwilling to pay the undoubtedly higher cost of an ATV set. Therefore, the Commission should consider setting appropriate criteria for mandating that all television sets shipped in interstate commerce or imported into the United States include the capability to receive and display ATV, including HDTV.^{42/} This should occur when the transition is well underway and it is economically feasible to end the manufacture of NTSC-only sets without injuring consumers. The Commission might consider a notice requirement on NTSC-only sets warning the consumer that the FCC intends to end the television transmissions which the set is capable of receiving.

We have three views with respect to the technical capabilities that should be required in ATV receivers and set-top boxes. First, we urge that the Commission use its authority under the Communications Act, 47 U.S.C. § 302a(a), to regulate the operation of radio frequency receivers to prevent interference above certain levels. As we stated in the Allotment/Assignment Approach, the best laid channel assignment plans that assume certain ATV system performance characteristics will not achieve the desired signal coverage if ATV receivers are allowed to be manufactured to under-perform.

There is a direct relationship between consumer receiver noise figures and ATV

^{42/} FCC Chairman Reed Hundt alluded to such a requirement in his speech before the Industry Leadership Conference Information Technology Association of America (October 9, 1995), in which he stated: "To make digital broadcast a reality, Congress could pass a law requiring all TVs sold after July 1, 1997 to have the capability to receive digital transmission. That would raise the price of TVs less than \$100 -- and give us a whole new industry."

transmission power requirements. It is critical that the FCC, the broadcasters and consumer equipment manufacturers work in close collaboration to achieve the optimal balance. To this end, receiver manufacturers should be required to design sets that live up to the Grand Alliance prototype system's performance capabilities. See Allotment/Assignment Approach, at 33.

Second, the Commission should ensure that ATV receivers can display all broadcast signals that are included in the ATV standard.^{43/} The Grand Alliance system takes great pains to permit interlaced and progressive formats to make ATV transmissions as friendly as possible to all applications. This same principle of interoperability should govern set manufacturing so that all digital receivers and set-top boxes include "all mode" decoders, capable of decoding and displaying all signals. With respect to digital signals, we strongly believe that all digital receivers should be able to render these signals in a recognizable display and with adequate sound,^{44/} regardless of whether the incoming format is HDTV or SDTV, progressive or interlaced scan, or in a 4 x 3 or 16 x 9 aspect ratio. With respect to analog signals, all digital receivers and set-top boxes should be capable of receiving and displaying the NTSC signal. Such a mandate will ensure that viewers have no disincentive to purchase ATV sets. They will still have access to the NTSC programming in addition to the ATV programming, to the extent that they differ.

^{43/} The All Channel Receiver Act of 1962, Pub. L. No. 87-529, 47 U.S.C. § 303(s), provides the Commission with the necessary authority.

^{44/} We recognize that not all HDTV programs will be presented with full video resolution or surround-sound audio in all ATV receivers.

Third, the Commission should safeguard against the anti-competitive use of set-top boxes to create technological barriers that could deny the viewing public access to ATV programming. Central to the FCC's ATV agenda has been the goal of ensuring that free, over-the-air television remains fully available to all Americans in the age of advanced television. Set-top boxes could cause unnecessary and anti-competitive bottlenecks in the distribution of ATV programming if, for example, they act as "gatekeepers," capable of delivering only certain digital transmission protocols. This would limit consumers' choice or force them to buy multiple set-top boxes. The Commission should prevent this potential bottleneck by requiring that boxes designed to receive (and descramble or decompress) cable signals be able to accommodate terrestrial broadcast ATV signals as well. Commission adoption of an open access safeguard will help ensure that the FCC's demonstrated commitment to the availability of ATV for all Americans will not be frustrated.^{45/}

One of the ways the Commission has already attempted to ensure inter-industry technical compatibility for the benefit of the consumer is to oversee the development of compatible broadcasting and cable ATV transmission standards within the Advisory Committee on Advanced Television Systems process. Of course, the possibility exists that the cable industry will eschew such a compatible technical standard and select instead a standard that is not compatible with the broadcast ATV standard. Such a choice would raise a number of serious concerns that we believe are best addressed in a separate proceeding on standards that the Commission has indicated it will

^{45/} Of course, the Commission also will need to address these compatibility and open access issues as the ATV technical standard itself is put out for formal comment in the coming months.

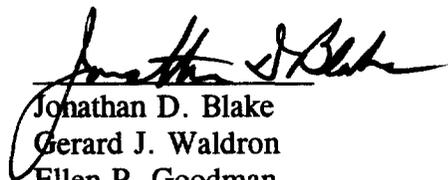
open.^{46/} Suffice to say here that the technical standard the cable industry, or any part of that industry, selects should not be permitted to interfere with cable systems' fulfillment of their must carry and other obligations (e.g., non degradation, etc...). Any other result would render these must carry and other obligations meaningless, thereby undermining free over-the-air broadcast television and retarding the transition to ATV.

CONCLUSION

The Commission adopted the Fourth NPRM with a primary objective of "preserv[ing] our nation's free, universal broadcasting service."^{47/} The foregoing comments urge a way to achieve that goal so that the public is able to receive a new digital television broadcast service as quickly as possible without prematurely losing the one on which it now depends.

Respectfully submitted,

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Dated: November 20, 1995

^{46/} See First Report and Order, ET Docket No. 93-7, 9 FCC Rcd No. 10 (April 4, 1994), para. 144.

^{47/} FCC Report No. DC-95-103, MM Docket No. 87-268 (July 28, 1995).

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