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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20054

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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STATEMENT OF FAYE M. ANDERSON

I am pleased to have the opportunity to participate in the Federal Communications Commission's *en banc* hearing on digital television, and in particular, the panel focusing on "the public interest, convenience and necessity." The Commission is to be commended for initiating an open and coherent public dialogue about the most efficient uses of spectrum after a nearly decade-long "all-industry" pursuit of a misguided industrial policy to promote high definition television (HDTV).

For too long, the debate about spectrum policy has been the exclusive province of special interest groups--broadcasters and consumer electronics manufacturers and their legions of lawyers and lobbyists--with no input from the American public. Although the Commission's original plan to set aside spectrum for HDTV has been rendered obsolete by advances in digital compression technology, the prohibitive cost of HDTV sets and the sale of the last American-owned television set manufacturer, these special interests still proclaim that the public interest will nevertheless be served by giving existing broadcasters 6 MHz of new spectrum which they will use to provide new digital broadcast and non-broadcast subscription services. If the current channeling scheme is implemented, broadcasters will gain an unfair competitive advantage, and reap an unearned and unconscionable windfall at the expense of American taxpayers who will unwittingly subsidize their transition to digital technology.

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The clear and unambiguous mandate of the Commission is to safeguard the public interest and promote competition. It is not the role of the Commission to tweak the rules to "stimulate the market for ATV,"¹ "drive the market for new digital sets"² or "assure a fair marketplace test of the public acceptance of HDTV as the cornerstone of the next generation of broadcast service."³ Thus, a discussion of digital broadcasters' obligation to serve the public interest begs the threshold question: What public interest is being served by a government-mandated transition to digital transmission that doubles the amount of spectrum assigned to existing broadcasters, forces consumers to spend billions of dollars to receive "free TV," widens the trade deficit, and disenfranchises millions of Americans, who depend on free, over-the-air television as their primary source for news, information and entertainment, but who are unwilling or unable to make the investment in digital television sets?

Or, as Commission Chairman Reed Hundt has asked: "Is there any evidence of market failure? Any evidence that government action is necessary to provide public benefits that would otherwise be denied?"⁴

Fortunately, Congress has included a provision in the Omnibus Budget Reconciliation Act ordering the Commission to re-evaluate its ATV licensing plan in light of changed circumstances

¹Broadcasters' Comments on the Fourth Notice of Proposed Rulemaking, MM Docket No. 87-268, November 20, 1995, p. 3.

²Comments of Capital Cities/ABC, Inc., MM Docket No. 87-268, November 14, 1995, p. 8.

³Comments of CBS, Inc., MM Docket No. 87-268, November 20, 1995, p. 7.

⁴Hundt, Reed. "Digital TV: We Can Work It Out." International Radio and Television Society, November 21, 1995, p. 5.

in digital technology, the competitive environment, federal budget priorities, and the Commission's authority to auction licenses for new services. I respectfully submit that at the end of its review, the Commission will conclude that the public interest in digital broadcasting will be served by auctioning the spectrum to the highest bidder. Consistent with the Commission's long-standing policy to promote diversity of ownership and viewpoints, bidding should be open to all qualified applicants with no special preferences given to existing broadcasters.

The public benefits that will accrue from auctioning digital broadcast spectrum are manifold. First, an auction will ensure that the American people get a fair return for the commercial exploitation of a scarce and valuable public resource. The spectrum will be assigned to those who value it the most, thereby, stimulating economic growth and job creation.

Second, auction proceeds can be used to address public concerns about balancing the budget and improving the educational system.⁵ Indeed, the Commission has estimated that an auction would raise between \$11 and \$70 billion. One Wall Street analyst has estimated a digital broadcast spectrum auction would raise \$44 billion;⁶ other estimates range as high as *\$500 billion*.⁷

Chairman Hundt has appropriately given high priority to ensuring that America's children share in the benefits of the communications revolution. Accordingly, a portion of the auction

⁵"Voter Anxiety Dividing GOP; Energized Democrats Backing Clinton." Times Mirror Center for The People & The Press, November 14, 1995.

⁶Reidy, John S. "Testimony of John S. Reidy." United States Senate Committee on Commerce, Science and Transportation Hearing on Spectrum Auctions, September 12, 1995.

⁷Safire, William. "The Greatest Auction Ever." The New York Times, March 16, 1995.

proceeds should be earmarked to connect the nation's public schools and libraries to the information superhighway. There is a compelling public interest in using a public resource to strengthen the nation's public education system: By 2000, 60 percent of the new jobs will require information technology and computer-related skills that are held by only 20 percent of the population.

The historical precedent for an education technology earmark is the Morrill Act, signed into law by President Abraham Lincoln on July 2, 1862. The goal of the Act was to ensure the availability of a skilled work force as the nation was transforming from an agrarian to an industrial economy. Under the terms of the Act, public land was granted to the states and territories for the express purpose of establishing a public institution of higher education to provide educational opportunities that would prepare a broad segment of the population for the industrial age. Today, there is at least one land-grant institution in every state, one of which--Massachusetts Institute of Technology--is a member of the Digital HDTV Grand Alliance.

In its report to Congress, the Commission should recommend that a portion of the auction proceeds be earmarked as education technology block grants to the states for the express purpose of funding schools' and libraries' connection to the information superhighway. The education technology block grants would be the information age equivalent of the Morrill Act.

The public interest will be ill-served by limiting initial eligibility for ATV licenses to existing broadcasters and contravenes long-standing Commission policy to encourage the participation of women and minority-owned businesses in the broadcast industry. At the dawn of the digital age, the proposed ATV licensing plan closes off one lane of the information superhighway to new entrants, limits competition for digital broadcast and non-broadcast

services, and grants special preferences to existing broadcasters.⁸ The characterization of the ATV licensing scheme as a mere "reallocation" of spectrum is a transparent and disingenuous 'fig leaf' to avoid the restrictions of *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945). As a matter of law and policy, eligibility to compete for ATV licenses should be open to all qualified bidders.

As to whether a 15-year transition period is ground for limiting initial eligibility to existing broadcasters, consider this: The American Association for Retired Persons estimates that in the next 18 years, 76 million Americans will be age 50 and over.⁹ The vision for ATV penetration is that advertiser-supported programming will drive consumers to invest in digital television sets. The consumers (read: "eyeballs") that advertisers are most interested in are in the 18 to 49 age cohort. With digital broadcast and non-broadcast services targeted at consumers under age 50, what incentive, if any, will aging baby boomers have to invest part of their retirement savings in digital television sets?

Senate Commerce Committee Chairman Larry Pressler has observed that "spectrum issues are very political."¹⁰ As a matter of policy and real politics, the transition period from analog to

⁸David Honig, executive director of the Minority Media and Telecommunications Council, has noted, "Imagine the outcry in 1927 if the FRC had restricted licenses to newspaper owners. Or imagine if the FCC, in 1949, had decreed that only radio owners were eligible for the first television licenses, and that the licensees could use the new TV spectrum for beepers if they so chose." David Honig, Letter to Federal Communications Commission Chairman Reed Hundt, MM Docket No. 87-268, July 21, 1995.

⁹Joyce Price. "AARP Magazine Polishes Image As Boomers Reach 50." The Washington Times, November 24, 1995, p. A2.

¹⁰Pressler, Larry. "Statement of Senator Larry Pressler." United States Senate Committee on Commerce, Science, and Transportation Full Committee Executive Session, September 28, 1995, p. 2.

digital transmission will be substantially longer than 15 years and will not end until there is *100 percent* penetration of digital television sets because neither Congress nor the President of the United States will allow broadcasters to pull the plug on their analog transmission and disenfranchise millions of senior citizens, along with millions of low-income Americans.

Finally, I too applaud Congress' decision ordering the Commission to step back and rethink the ATV licensing scheme. Digital broadcasters' public interest obligations will perforce be determined by the manner in which digital broadcast licenses are assigned, the amount of spectrum assigned, and whether broadcasters will have the flexibility to use the spectrum for broadcast and non-broadcast subscription services. In any case, no further study is required to conclude that the proposed ATV licensing plan serves the special interests of those who have controlled the debate since 1987 and "is the biggest corporate welfare giveaway of the decade."¹¹

The German philosopher Hegel noted that historic facts appear twice: the first time as tragedy, the second time as farce. The Commission is at an historic moment; there should be no rush to judgment. In the original assignment of analog television licenses, the Commission made a "colossal mistake"¹² in failing to secure quantifiable, measurable and concrete commitments from broadcasters to serve the public interest. That was indeed a tragedy. The tragic consequences of that policy failure are reflected in survey findings that a whopping 80 percent of Americans believe television "is harmful to society, and especially to children."¹³ The proposed ATV licensing plan presents a farcical notion that the public interest will be served by giving existing

¹¹Comments of Media Access Project, *et al.*, MM Docket No. 87-268, November 20, 1995, p. 37.

¹²Hundt, Reed. The National Press Club, July 27, 1995, p. 3

¹³*Id.* at 1.

broadcasters 12 MHz of spectrum for an indefinite period of time, and gives rise to the "national scandal" about which Henry Geller, former FCC general counsel, has warned.¹⁴

I look forward to working with the Commission as it prepares its report to Congress to ensure that history does not repeat itself and that the "public interest, convenience and necessity" will inform Commission policies and decisions in the digital age.

Respectfully submitted,



Faye M. Anderson
President
Douglass Policy Institute
2025 "Eye" Street, N.W.
Suite 1122
Washington, DC 20006
(202) 488-8458

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¹⁴Geller, Henry. Testimony of Henry Geller. United States Senate Committee on Commerce, Science, and Transportation Hearing on Spectrum Reform, July 27, 1995.