

1 COMMISSIONER HUNDT: Thank you very much, Ms.
2 Anderson.

3 MS. ANDERSON: Good morning, I want to comment the
4 Commission for initiating an open dialogue on what is indeed a
5 controversial issue, the proposed give away of lose spectrum
6 to broadcasters. For nearly ten years, the debate about HDTV
7 has been the exclusive province of special interest groups,
8 broadcasters, consumer electronic manufacturers and their
9 legions of lawyers and lobbyists with no input from the
10 American public. While the Commission's original plan to set
11 aside spectrum for HDTV has been rendered obsolete by advances
12 in digital compression technology and the utter lack of
13 consumer demand for HDTV sets that cost the equivalent of a
14 down payment on a new car, these special interests loudly
15 proclaim that the public interest will nevertheless be served
16 by doubling the amount of spectrum assigned to broadcasters
17 and giving broadcasters the, "flexibility" to use the new
18 spectrum to provide new digital broadcast and non-broadcast
19 subscription services. If the proposed ATV licensing plan is
20 implemented, broadcasters will reap an unconscionable windfall
21 at the expense of American taxpayers who will unwittingly
22 subsidize their transition to digital technology. Such an
23 eventuality would be the national scandal that former FCC
24 General Counsel Henry Geller warned about in his testimony
25 before the Senate Commerce Committee last July.

1 I believe a discussion of digital broadcasters'
2 obligation to serve the public interest is premature. The
3 threshold question needs to be answered, what public interest
4 is being served by government mandated transition to digital
5 television that doubles the amount of spectrum assigned to
6 existing broadcasters, forces consumers to spend an estimated
7 \$33 to \$187 billion to receive "free-TV," widens the trade
8 deficit and disenfranchises millions of American who depend on
9 free over-the-air television as their primary source for news
10 information and entertainment. I respectfully submit that at
11 the end of this review, the Commission will conclude that the
12 marketplace should determine consumer demand for digital
13 television and that the public interest will be served by
14 auctioning the spectrum to the highest bidder and earmarking a
15 portion of the revenues for educational technology block
16 grants to the states to a connect the nation's public schools
17 and library to the information super highway.

18 Finally, the Commission and our nation are at an
19 historic moment. In the original assignment of television
20 licenses, the Commission failed to secure concrete commitments
21 from broadcasters to serve the public interest. The tragic
22 consequences of that policy failure and lack of accountability
23 are reflected in survey findings that a whopping 80 percent of
24 Americans believe television is harmful to society and
25 especially to children. The proposed ATV licensing plan

1 presents a farcical notion that the public interest will be
2 served by giving existing broadcasters 12 MHz of spectrum for
3 an indefinite period of time. We can, and indeed, must do
4 better for our country, for ourselves, for our children, and
5 for future generations. My time is up, I'd be happy to answer
6 any questions that you might have. Thank you.

7 COMMISSIONER HUNDT: Mr. Honig.

8 MR. HONIG: Good morning. Throughout the 87 year
9 history of broadcasting, the airwaves supposedly have belonged
10 to the public at large. Yet, even today, minorities own only
11 31 full power television stations, 2.7 percent of the total,
12 representing less than have of one percent of industry asset
13 value. Owing to the elimination of tax certificates and the
14 disuse or suspension of your other race-conscious licensing
15 policies, minority media ownership is declining rapidly. This
16 is a national disgrace.

17 Your highest priority should be to rectify this
18 insidious and unlawful misallocation of one of our greatest
19 national resources. We urge you to license no ATV facilities
20 until you complete post-Adarand research study and develop a
21 race-conscious plan aimed at insuring that ATV licensees
22 resemble the audiences they will serve. Licensing first and
23 studying minority ownership later will mean locking out
24 minorities forever.

25 We encourage you to adopt four goals in ATV

1 | licensing. First, you should ensure that the licensing
2 | process will foster diversity in ownership and viewpoints.

3 | Second, you should remedy, once and for all, the
4 | Commission's long history, over two generations, of official
5 | discrimination and ratification of licensees' discrimination.

6 | Third, you should take account of the profound
7 | difficulties faced by minorities in obtaining access to
8 | capital.

9 | And, fourth, you should insure that every licensee
10 | selected for ATV, irrespective of how they are selected, will
11 | implement an aggressive EEO program.

12 | The question of the day is this: Which is the most
13 | promising algorithm to insure that minorities have a
14 | meaningful opportunity to win ATV construction permits,
15 | lotteries, comparative hearings, auctions, or a gift to
16 | incumbents?

17 | The answer is either comparative hearings or
18 | auctions, provided that either hearings or auctions are
19 | structured to facilitate the licensing of minorities and other
20 | applicants with strong commitments to public service.

21 | Comparative hearings are the most rational means to enable the
22 | best applicants to be selected. Discovery and scrutiny by an
23 | ALJ are powerful disincentives to most fraud and front artists
24 | and to those with no commitment to public service.

25 | Auctioning off the spectrum would insure that only

1 the most well-financed corporations would receive the
2 licenses. Indeed, an auction would probably shut out most of
3 the 31 minority-owned full power NTSC licensees, given their
4 lack of access to the development capital needed to bid in an
5 auction and pay the cost of migration. It would be tragic to
6 lose any of these 31 good broadcasters.

7 Nonetheless, if you decide to use auctions, you
8 should design in a substantial credit for minority ownership
9 of the type you used successfully in IVDS licensing. You
10 should also build in credits paralleling those you would use
11 in comparative hearings, including civic participation, EEO
12 proposals and minority ownership incubation. And you should
13 work with Congress to develop legislation authorizing the
14 application of auction proceeds to public broadcasting,
15 children's programming and a minority ownership equity fund.

16 Finally, we express our concern that the phase-out
17 period for NTSC not be too swift. This morning Stanley
18 Hubbard suggested that it be tied to penetration and we would
19 tend to agree, perhaps, to 95 penetration. The poor depend on
20 television as their window to citizenship. Low income
21 Americans must not be forced to spend hundreds of dollars on
22 high-tech equipment they didn't ask for.

23 COMMISSIONER HUNDT: Thank you, Mr. Siegel.

24 MR. SIEGEL: Good morning. I'm honored to be here
25 today to focus on the nature of broadcasters' public interest

1 obligations in the digital age. We believe that the reference
2 point for analysis of this and all issues relating to ATV
3 should be the maintenance of free universal broadcast
4 television. It's a national jewel and, I might add, the only
5 quality consumer alternative to pay video. Numerous
6 companies, such as ours are willing to risk capital and devote
7 our energies and creativity to the education and entertainment
8 of our viewers. The regulatory framework established by the
9 FCC for the transition from analog to digital broadcasting
10 will largely determine our ability to survive into the next
11 century. Broadcasters recognize that their future lies in the
12 rapidly developing digital technology, but the transition will
13 be risky and difficult. Stiff competition will come from a
14 variety of multichannel, multiservice, wire and wireless pay
15 systems.

16 Our company owns eight television stations and
17 notwithstanding the competitive challenges, we are investing
18 substantial sums to create a new over-the-air network service
19 that can help many local independent stations be competitive.
20 Last January Chris-Craft launches the new UPN network which we
21 own and which six of our stations, previously independent, are
22 now affiliated. We, and INTV's members recognize that as
23 broadcasters we have a special obligation to serve the needs
24 and interests of our licensed local communities. Free over-
25 the-air television will continue to be the core of our

1 business in a digital world, but localism, in the digital age,
2 will mean different solutions for different broadcasters
3 serving different consumers in different communities.
4 Competitive and regulatory flexibility, not rigidity, will be
5 required particularly for the affiliates of our emerging
6 network, many of which are far from the strongest stations in
7 their markets.

8 We submit that a station's compliance with its
9 public interest obligations should be judged on the basis of
10 the totality of its free over-the-air offerings and that the
11 extent of that obligation should not be determined or affected
12 by the number of such offerings that might be offered over the
13 station's digital channel. As we transition to digital, the
14 public is best served if stations are given the greatest
15 flexibility in determining how to utilize their bandwidth.
16 Thank you.

17 COMMISSIONER HUNDT: Thank you. We'll now do the
18 six-minute blocks of questions and answers. Commissioner
19 Quello.

20 COMMISSIONER QUELLO: Okay, Mr. Honig, you know the
21 goal of increasing minority ownership is supported, I think,
22 by about everyone up here, including me, and in fact, I still
23 favor tax certificates and as a strong supporter of it, I
24 think it's too bad that some how or other it got thrown by the
25 wayside. But, No. 1, HDTV spectrum's going to be very

1 expensive for anyone getting it, I mean, you are transmitting
2 to an audience that isn't there yet. It's going to be very,
3 very -- a very tough thing to get financing. Do you have any
4 ideas on how we could, you know, in light of Adarand and help
5 enhance the ability of minorities to secure financing. I
6 mean, give us your best shot?

7 MR. HONIG: There are a couple of approaches. One
8 would be to designing an incentive for applicants to incubate
9 minority owners as a means of selecting which applicants
10 receive the most desirable or the most space. The National
11 Association of Black Owned Broadcasters developed such a
12 proposal and we would endorse it. Probably, I think the
13 important point is that the Commission is going to have to
14 grapple with this question of race-conscious remedies through
15 it's post-Adarand study before it takes to undertakes to
16 license, probably this last great, great opportunity for
17 ownership. That's the most important point. If it licenses
18 this spectrum first, before it grapples with that question,
19 then it does the study and finds that it could have used
20 incentives such as that, at that point it's too late. And the
21 opportunity will be forever lost to us.

22 COMMISSIONER QUELLO: I think the idea is that what
23 requirement is there if say a minority would have to get
24 enough money to bid for it, but if they got it, would there be
25 some provision where they'd have to operate it or could they

1 just transfer it to someone else?

2 MR. HONIG: Right now, there are 31 stations,
3 suppose new costs are imposed on them and often these are
4 fairly small operators that are highly leveraged now, in
5 effect, the Commission would be saying, you must go to the
6 banks, you must borrow against revenues that you don't now
7 have and, in effect, you're going to have to turn over much of
8 your company to other investors and really become a different
9 kind of company simply because we want bigger pictures.

10 I question whether that makes sense and until the
11 Commission grapples with how we're going to insure diversity,
12 it really shouldn't -- that's a necessary decision to all of
13 the rest of the licensing decisions that be made.

14 COMMISSIONER QUELLO: It's just a matter of
15 financing, I mean, that's a real tough problem on how we can
16 get it. Mr. Diller, I'm glad to see that you are advocating
17 definite and increased public interest obligations at this
18 time. I just want you to know, on a personal note, that I was
19 here when we authorized home shopping services and I also want
20 you to know that I caught hell from some my best friends in
21 Congress for authorizing it. It was a very controversial
22 thing, so --

23 MR. DILLER: Probably me too, since I was the
24 competition.

25 COMMISSIONER QUELLO: Wondering what we were doing

1 and the only argument I had at the time was that, look,
2 they're meeting a commercial demand, they're serving that, but
3 -- I mean, home shopping is 100 percent commercial if you want
4 to take that approach and I had a tough time with it. I
5 finally voted for it. So I have to agree with what you're
6 saying today, but how do you square increased public interest
7 requirements with the current realities of the marketplace in
8 which broadcasters are facing more channels than ever before,
9 facing an increasing and a variety in the strength of
10 multichannel competitors.

11 MR. DILLER: I don't think that abrogating those are
12 going to lessen their competitive edge. I think that the
13 system, this mass engine broadcast system that has always
14 worked somewhere in the nexus of the balance between commerce
15 and responsibility and has given every broadcaster kind of a
16 secondary agenda, has not only delivered generally good
17 programming, but has made it the -- but it has been the
18 service that has been the one that is the only one right now
19 that is mass. All of the other alternatives that do chip
20 away, chip away from a rating and a half, .7, 1.3, but for
21 bigtime broadcasting, it's in the hands of the people who
22 deliver it with these responsibilities intact and I think that
23 they're strengthening of those responsibilities is only going
24 to allow broadcasters to be more competitive, not less
25 competitive.

1 COMMISSIONER QUELLO: Well, there is a cost, of
2 course, involved in this thing and, as you heard this morning,
3 the broadcasters certainly feel that they have a public
4 interest obligation and they perform a valuable public
5 service. So, in a speech about three months ago, I had two
6 pages of existing broadcast regulations -- going away, there's
7 a lot of regulations still on the book, issues in programming
8 is one of the big ones, but there are so many others. But I
9 was interested in your comments and I'm glad to see that your
10 creativity is being put a very practical use these days with
11 your expansion and good luck.

12 MR. DILLER: Thank you very much. I will add that
13 we have, in our petition or filing or whatever it is
14 technically called, for a change in control of the Silverking
15 Stations, we have said that our plan is to migrate them from
16 home shopping, to be full service local providers of
17 entertainment, news, information, etcetera. So that's my
18 comment about home shopping on broadcasting.

19 COMMISSIONER QUELLO: All right, thank you. You
20 know, Ms. Sohn, what if a station -- is my time up?

21 COMMISSIONER HUNDT: Do you have --

22 COMMISSIONER QUELLO: Oh, yes, I'm all through,
23 thank you.

24 COMMISSIONER BARRETT: Could you tell me what page
25 those comments are that you just described in terms of this --

1 what it is you agreed to do?

2 MR. DILLER: What page?

3 COMMISSIONER BARRETT: Yes.

4 MR. DILLER: You must be joking. It's in here, I
5 promise you it's in there.

6 COMMISSIONER BARRETT: You mentioned that
7 broadcasters --

8 COMMISSIONER HUNDT: It's on the front page.

9 COMMISSIONER BARRETT: You mentioned that
10 broadcasters --

11 MR. DILLER: Was it on the front page?

12 COMMISSIONER BARRETT: -- ought to pay the going
13 rate.

14 MR. DILLER: Yes, sir.

15 COMMISSIONER BARRETT: Should that be in programming
16 or cash?

17 MR. DILLER: No, I think probably it should -- if
18 they're going to use the spectrum for anything but free
19 broadcasting, they should pay in cash to the government the
20 going rate for such services.

21 COMMISSIONER BARRETT: Notwithstanding the fact that
22 you -- I think you were recorded as suggesting that there
23 ought to be more children's programming and broadcasters ought
24 to adhere to that or commit to that, would that -- would you
25 accept that as a substitute?

1 MR. DILLER: Well, I think you get into difficulties
2 when you mix these things. I think that the true principles,
3 you know, you operate free broadcasting and you get the
4 license for free, then you've got to program in the broad
5 public interest, which obviously, over different periods and
6 times, that interest changes and if your -- if, in fact,
7 you're taking care of your responsibilities, then all ought to
8 be okay in that bargain, everybody is getting something quite
9 appropriate. We have a great system, that was based on that.
10 I think it's eroded in recent times and I think it can be
11 strengthened in those respects. If, however, you're going to
12 have it not be free and people have to pay for it, then that
13 is a totally different standard and that should go to the
14 highest bidder, however you want to organize that.

15 COMMISSIONER BARRETT: But you would not accept the
16 programming that you have been supportive of most recently in
17 terms of additional or more children's programming, a
18 quantitative amount for the cash?

19 MR. DILLER: No, because I think once you get into
20 those kinds of judgements, you end up making lots of mistakes.

21 COMMISSIONER BARRETT: Okay.

22 MR. DILLER: You slice the salami like of in
23 probably contradictory ways over a period of time.

24 COMMISSIONER BARRETT: Ms. Anderson, I'm not sure --
25 you made two statements that I'm sure that Gigi and certainly

1 David would probably disagree with you on and that is that the
2 public has not input in this process, and secondly, that we've
3 failed to serve the public interest. It may be that we don't
4 agree -- you don't agree with how you think we have served
5 that interest or the fact that one has missed filings or have
6 not filed, but -- I don't think there's any evidence that
7 we've violated either of those. It is clear to me that David
8 writes so much it almost makes you sick, even though we're
9 glad to hear it, so I don't think there's any evidence that
10 we've violated any of those two things.

11 MS. ANDERSON: Well, I'm not suggesting that.

12 COMMISSIONER BARRETT: Okay. David, let me ask you
13 a question. If I owed a station in San Diego and I own a
14 station in El Paso, Texas, and I own a station in San Antonio,
15 Texas, do I serve the community for my racial persuasion or do
16 I serve that community there?

17 MR. HONIG: We would need to know a lot more
18 information.

19 COMMISSIONER BARRETT: Well, what information do you
20 need to know other than my economic suggests to me that I
21 serve the market where my audience is?

22 MR. HONIG: Who makes the decisions, who do you
23 hire, who do you entrust --

24 COMMISSIONER BARRETT: Obviously it's not clear what
25 I am but I'm saying, it seems to me that the driving force

1 behind my serving in San Diego, and El Paso, Texas and in San
2 Antonio, Texas would have absolutely nothing to do that I was
3 a minority owner, it had to do with my wanting to stay in
4 business and I would need to serve that public, which brings
5 me to -- does it really make a difference who owns a station
6 or does it make a difference what kind of programming they
7 provide?

8 MR. HONIG: What kind of programming you provide is
9 in very large measure determined by who owns the stations and
10 --

11 COMMISSIONER BARRETT: Is it? Let me ask you this,
12 are you aware of WPCR in Chicago which has the No. 1 drive
13 show in the morning which probably has two or three in the
14 afternoon, it is No. 1 or 2 in Chicago. It is just --
15 overflows in terms of its community committee.

16 MR. HONIG: And Gannett owns it.

17 COMMISSIONER BARRETT: Uh-huh.

18 MR. HONIG: That's right. The --

19 COMMISSIONER BARRETT: Well, let me finish my point,
20 does it make any difference who owns it as long as they
21 program satisfactory to that community or does the ownership
22 make a difference?

23 MR. HONIG: Two point --

24 COMMISSIONER BARRETT: If I own the station, I'm
25 going to program to the economics of how I can survive and not

1 to a community.

2 MR. HONIG: First, Gannett would not be the
3 progressive company it is without having led the industry in
4 equal employment opportunity within its own ranks from the
5 middle '70s. Second, our point is not that non-minorities
6 can't provide good service to minorities or vice-versa. The
7 point is that when minorities are included in the mix of
8 owners, you tend to get more -- a greater opportunity for
9 viewpoints that might not otherwise be heard, to be heard by
10 some of those broadcasters. There are three or four minority
11 owners in Chicago, too, I think Chicago is much better because
12 of them.

13 COMMISSIONER BARRETT: But you don't program from a
14 racial persuasion perspective or a politics or philosophy,
15 that's a loss of your economic base, though, do you?

16 MR. HONIG: That's one factor.

17 COMMISSIONER BARRETT: I mean, it would be foolish
18 for me to be in the three towns that I mentioned and
19 notwithstanding who I am to program for Chicago's -- certain
20 segments in Chicago and New York and L.A., doesn't make very
21 much sense, if I want to stay in business.

22 MR. HONIG: It's much more subtle. A minority, if
23 they're involved -- if the minority owner, or any owner, is
24 involved in the making of program decisions, that person's
25 background, any owner's background, brings non-pecuniary

1 values to the table in who they hire, who they entrust with
2 those decisions, how they make editorial judgements. At the
3 margin, when you can't make precise economic judgements about
4 what program is better, which one you choose. The research
5 data has supported that and those finding in Metro to that
6 effect have been not been specifically overruled, I think they
7 were valid.

8 COMMISSIONER BARRETT: Okay, I have to stop, I'll
9 follow up later. Thank you, Mr. Chairman.

10 COMMISSIONER HUNDT: Commissioner Ness.

11 COMMISSIONER NESS: Mr. Siegel, you mentioned -- you
12 were talking about public interest obligations, what are those
13 public interest obligations, can you describe them, please?

14 MR. SIEGEL: Well, serving our local communities,
15 the children's programming, which we certainly support,
16 providing information, ascertaining what our communities are
17 all about and trying to meet those needs.

18 COMMISSIONER NESS: If you -- you mentioned that we
19 should look at the totality of offerings that are free over-
20 the-air, if a station had flexibility with its digital
21 spectrum under the Grand Alliance standard, and it were to
22 place all of its public interest programming, be it the
23 children's programming or carriage of political advertising or
24 any of the community service needs, on one of the streams of
25 programming outside of the mainstream programming that might

1 | be carried, for example, on cable, would that, in your view,
2 | be deemed to be serving the public interest?

3 | MR. SIEGEL: I think it could be deemed to be
4 | serving the public interest, yes. I think that -- for
5 | example, what we're talking about here is an advertising
6 | supported service and, yes, I think that it could be deemed to
7 | supporting the public interest, yes.

8 | COMMISSIONER NESS: Ms. Sohn, do you agree with
9 | that?

10 | MS. SOHN: Well, of course, I don't agree with it
11 | but let me try to explain with why. Well, I do agree -- let
12 | me just mention that I do agree with Mr. Siegel to the extent
13 | that I believe that a broadcaster's public interest service
14 | should be judged by the totality of what they do and not that,
15 | for instance, children's television obligations shouldn't, you
16 | know, be attached to each individual service that they
17 | provide. But where we disagree is that I don't think it's
18 | enough just to take the public service obligations that
19 | broadcasters have now and say they need to do no more. I view
20 | this gift of spectrum, it's not a new loan and it's not a new
21 | reallocation of spectrum, and I believe that in return
22 | broadcasters should do a bit more. If can address
23 | Commissioner Quello's concern about how broadcasters can
24 | compete in a multichannel world, they're doing just fine and
25 | they'd do even better if they get another 6 MHz of spectrum to

1 | become multichannel providers.

2 | COMMISSIONER NESS: Mr. Diller, you talk also about
3 | public interest obligations, in fact, you waxed eloquently on
4 | the topic, how would you enforce those public interest
5 | obligations?

6 | MR. DILLER: Well, I think that some of the basic
7 | rules have to probably be modified. I mean, you can go back
8 | to some degree to what it was some time ago and look inside
9 | the process where a broadcaster would say, I would recommend
10 | that a broadcaster say at the beginning when applying for a
11 | license, that he would do in each of these areas or in one
12 | particular area, a range of services that very clearly
13 | demonstrated public interest programming, whether it be in
14 | either news or in educational programming, in children's
15 | programming, in local community programming. Whatever it was
16 | that he thought, she thought, it thought, that was appropriate
17 | and it would have to be significant and significant is not
18 | hard and fast. It might be 8 percent, it might be 12 percent,
19 | but it wouldn't be lip service, and it wouldn't be just a
20 | specific number of meeting some quota. It would be a genuine
21 | commitment and three years later or five years later, it would
22 | be judged as to whether or not it had been met, if it had been
23 | met, fine, if it had not been met, and it wasn't quickly
24 | cured, there would be serious repercussions. You would not be
25 | able to broadcast any longer. I mean, to me, I think, that is

1 a sensible and flexible way to deal with the issue.

2 COMMISSIONER NESS: Mr. Braverman, do you have some
3 -- do you agree with Mr. Diller?

4 MR. BRAVERMAN: Well, I don't think I agree with Mr.
5 Diller's premise, which is as of today broadcasters are not
6 living up to their public interest obligations. I do agree
7 with him, though, that if there is an issue with regard to
8 that question, it ought not to be tied -- its resolution ought
9 not to be tied to loaning the spectrum to broadcasters to
10 admit them to upgrade their service. This is a very difficult
11 set of questions, as you know, and there's a lot of history
12 here. If one were to conclude that as a general proposition
13 broadcasters are failing to live up to their existing public
14 interest obligations, a proposition I don't endorse, then I
15 think each -- its appropriate to take a look at some of the
16 strategies that were used in the past. I'm skeptical about
17 the promised performance regime that I think Mr. Diller was
18 referring to as to whether that worked, I think it was
19 abandoned in part because of the perception at the time that
20 it wasn't accomplishing the objective. But, again, you have
21 to go back to the premise and the premise is, are broadcasters
22 living up to their public interest obligations today, I
23 believe they are. I do not believe that increased public
24 interest obligations as an abstract proposition should be the
25 quid pro quo for loaning a spectrum in order to upgrade our

1 service to remain a viable service. If there is to be a
2 debate, and, by the way, I believe that we benefit, the whole
3 industry, the public benefits from the robust debate about the
4 very question of whether it resolves in quantitative
5 guidelines or not, I think we are -- should be held
6 accountable to what we're doing, I think we should be
7 challenged as to what we're doing. Having said that I think
8 we're living up to our obligations, I recognize the fact that,
9 as in every other endeavor in life, you can always do more and
10 you can always do better and we're prepared to be challenged.

11 COMMISSIONER NESS: Thank you. Ms. Anderson, you
12 say right now that there's no demand for HDTV, how can you
13 make that determination when there are no sets that are really
14 broadcasting in HDTV. when no broadcasters are broadcasting in
15 HDTV, when there's no programming on the market, etcetera, how
16 would you make that determination presently?

17 MS. ANDERSON: How does -- how did I make the
18 determination there's no demand for HDTV -- that the public
19 doesn't want it?

20 COMMISSIONER NESS: Right. They don't have it right
21 now, how can you say that they don't want it?

22 MS. ANDERSON: Well, that's why I go back to the
23 threshold question, what -- why is HDTV in the public
24 interest? I'm just not convinced pretty in pictures, better
25 quality audio is the most efficient uses of spectrum. There

1 was not, at one time, CD, the marketplace determined CDs
2 value, the marketplace determined the demands for CD. There
3 was not VHS and no BETA, the marketplace determined the
4 demand. All I'm suggesting is let the marketplace determine
5 the demand for HDTV.

6 COMMISSIONER NESS: That may work, for example, with
7 DSS or it may work with cable where there is some flexibility,
8 but for broadcast, broadcasters don't have the flexibility to
9 choose whether or not to provide HDTV unless they have the
10 spectrum and be, frankly, a standard because they need to have
11 the TV sets out there that will receive and show HD if that,
12 in fact, is going to be something that they choose to do. How
13 then would we not be precluding HDTV if we have, as for
14 example, Ms. Sohn, is suggesting, a condominium approach to
15 spectrum management or as some of the folks this morning were
16 suggesting that we just auction the digital spectrum and
17 require -- not make any requirements whatsoever that there be
18 a standard to be applied for that spectrum.

19 MS. ANDERSON: Okay, again, the threshold issue is
20 the need for HDTV. Assuming, for the sake of argument, the
21 Commission determines that HDTV is, indeed, in the public
22 interest, then that begs the question, how much spectrum to
23 give to broadcasters, will there be a commitment to transmit
24 an HDTV. This issue is, if they're not going to use the
25 spectrum for HDTV, why give it to them?

1 COMMISSIONER NESS: Thank you.

2 COMMISSIONER HUNDT: Thank you. Commissioner Chong.

3 COMMISSIONER CHONG: Thank you. Mr. Braverman, if a
4 broadcaster isn't meeting its public interest obligations,
5 would you agree with me that the time for the Commission to
6 address that is at license renewal time?

7 MR. BRAVERMAN: Yes.

8 COMMISSIONER CHONG: Thank you. Ms. Sohn, you know,
9 we've relied on broadcaster discretion for many years, in
10 terms of their meeting their public interest obligations, and
11 in your testimony you suggested that in a digital world we
12 should be much more aggressive and specific in our -- about
13 these obligations. I guess what I was wondering is, why would
14 we expect broadcasters to suddenly to need a change or more
15 direction or the Commission should be more aggressive about
16 the public interest obligation in a digital world. In my
17 view, moving from analog to digital is really just a
18 technology change. I mean, for example, when we went from
19 black and white TV to color TV, we didn't increase public
20 interest obligations at that time, why would we do that now?

21 MS. SOHN: Well, I -- let me just step back for one
22 moment and say, you know -- as well as I do that the
23 Commission should be more aggressive in having broadcasters
24 meet their public interest obligations, so this isn't really a
25 new -- no, while we do say rely on discretion, we sometimes

1 have had problems with the Commission's enforcement of the
2 Communications Act in that regard. This is, you know, I
3 disagree strongly with Mr. Braun on the previous panel that
4 this is akin to going from black and white to color. In my
5 mind, this is a whole new service, I mean, the possibilities
6 that broadcasters will have to do multiple program services,
7 to do non-broadcast services, to do subscription broadcast
8 services, it opens up a whole new world, and it gives them
9 incredible opportunities to make much more money and, in
10 exchange, I don't think it's unreasonable to ask for some more
11 public interest obligations. I mean, the public -- the whole
12 basis of our spectrum allocation, of broadcast spectrum
13 allocation is that broadcasters get it, the public accepting
14 in return. This is a new allocation, I think the public
15 should get more than what it just receives now.

16 COMMISSIONER CHONG: New allocation, are you talking
17 the loan of the 6 MHz channel?

18 MS. ANDERSON: Well, I think it's really semantics
19 when you say loan and some people say this is a reallocation.
20 Let me talk about reallocation first and the case was, and it
21 is mentioned in my comments and my testimony, is really
22 overwhelming that reallocations are mere exchanges. Now, this
23 is not a mere exchange. You heard Mr. Hubbard say that we're
24 going to need a very, very long transition period and, indeed,
25 if you don't set a date certain for a transition period, you

1 | may never get this spectrum back. I mean, broadcasters are
2 | now saying, oh, yeah, we're going to give it back, we're going
3 | to give it back, but give us a nice long transition period.
4 | Who knows when that's going to be, who knows when 95 percent
5 | penetration is going to take place. It may not take place in
6 | our lifetime.

7 | COMMISSIONER CHONG: Wouldn't it be sensible to
8 | monitor it as it went along and see how the market progresses?

9 | MS. ANDERSON: Yes, and I'm not saying it's not
10 | sensible and I'm also not saying that there shouldn't be a
11 | long transition period. In our comments, we do not advocate a
12 | particular amount of time for a transition period. But what
13 | I'm saying is, that when you conceive this as a mere loan, you
14 | have to look a little bit deeper as to what is really taking
15 | place here.

16 | COMMISSIONER CHONG: Mr. Braverman, your fellow
17 | panelist contend we should increase public interest
18 | responsibilities in a digital world. In fact, she wants you
19 | to spend 20 percent of your air time doing political public
20 | TV, children's television, do you think that with the new
21 | potential of digital television and the increased capacity
22 | that could bring a broadcaster that broadcasters will
23 | voluntarily provide public interest programming?

24 | MR. BRAVERMAN: I believe the answer to that
25 | question is yes, but let me explain. I think that the public