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

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

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its comments in response to the Sixth Further Notice of Proposed Rulemaking on Advanced Television Systems ("Notice").[1] NCTA is the principal trade association of the cable television industry in the United States and represents cable television operators serving over 80 percent of the nation's cable television households and over 100 cable programming networks. Its members also include cable equipment manufacturers and others affiliated with the cable television industry.

I. INTRODUCTION AND SUMMARY

The allocation issues raised by the Notice are largely technical in nature. But the channel allocation scheme must be based on a clear understanding of the government's objective in proposing the spectrum grant in the first place. The FCC should state, unequivocally, what its

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[1] Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, FCC 96-317, released August 14, 1996 ("Notice").

goal is in awarding new spectrum. In our view, that goal should be one digital program service channel, and no more, for each broadcaster wishing to make the transition from analog to digital television.

According to the Commission, its "overarching goals in this phase of the proceeding are to ensure that the spectrum is used efficiently and effectively through reliance on market forces and to ensure that the introduction of digital TV fully serves the public interest."[2] It goes on to assert that its "proposals will serve to foster the competitive provision of new and innovative DTV services and to promote economic growth and the creation of jobs in the telecommunications industry."[3]

From the outset, the cable industry has supported this market-oriented, free allocation of spectrum -- for one channel -- to broadcasters for the provision of advanced television (ATV), initially identified as HDTV, assuming:

- a prompt transition to ATV and the subsequent return of the analog spectrum;
- use of the spectrum for only one channel of ATV; and
- no burdensome requirements on cable that would disadvantage operators or program networks, such as additional must carry obligations.

This position is consistent with the goal articulated by the Commission -- the reliance on market forces for the efficient and effective use of spectrum and the fostering of the competitive provision of new services.

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2 Notice at ¶3 (emphasis added).

3 Id. (emphasis added).

We continue to support this "one channel" position.

There have been, however, repeated suggestions throughout this proceeding that the purpose of the spectrum allocation process is about something beyond the goals outlined by the Commission in the Notice, and, indeed, at the beginning of the proceeding in 1992.[4] Some broadcasters for example, argue for "flexibility" or -- more directly -- for the ability to use new spectrum for multiple channels and uses. We oppose this so-called "flexibility" since that spectrum is unnecessary for the original "one channel" purpose of this proceeding and would amount to an $11-$70 billion subsidy to the broadcasting industry.[5]

Consistency with the Commission's original goals demands that the proposed free spectrum grant not be used for a range of digital television ("DTV") services; that the spectrum not be provided with an indeterminate "transition"; that the government not mandate a single digital technology standard; and that cable's must carry obligations and other requirements not be extended to the new digital streams of programming broadcasters hope to provide.

We would recommend, therefore, that the Commission clarify the broad goals -- and specifically the "one" versus "multiple" channel use issue -- before resolving the channel allocation issue. If the goal of this proceeding does shift to endorse a "flexible use" rather than a

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4 See e.g., Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 6924, 6980 (1992) ("These effects and incentives are contrary to the reasons we are awarding broadcasters a second channel -- to permit the viewing public to make a nondisruptive transition to ATV and allow the reclamation of the second channel after that transition is complete".)

5 Hazlett, Thomas W., "Industrial Policy for Couch Potatoes," Wall Street Journal, August 7, 1995.

"one channel" approach, then we would support auctioning any new spectrum above and beyond that needed for a single channel.

II. BACKGROUND

This proceeding is the third the FCC has commenced on digital television: the first ("the policy proceeding") was initiated in August 1995 and dealt with various policy issues, including must carry of digital broadcast signals. NCTA filed comments and reply comments opposing any must carry requirement for cable carriage of digital broadcast signals.[6] The second ("the standards proceeding"), initiated in May 1996, dealt with adoption of the Grand Alliance Advanced Television ("ATV") transmission standard. NCTA, while not addressing the particulars of the DTV standard, opposed the government mandating any ATV standard.[7]

On July 25, 1996, the Commission adopted the Notice of Proposed Rulemaking in this proceeding, putting out for comment a proposal addressing (1) the policy to govern the allotment of channels for the Digital Television Service, (2) procedures for the assignment of those channels to existing broadcasters and (3) technical criteria for DTV service.

The Notice assumes that broadcasters will obtain a full 6 MHz of spectrum for DTV and proceeds on the basis of three goals: (1) to fully accommodate all eligible broadcasters with a DTV channel; (2) to provide, to the extent possible, all broadcasters with DTV service areas

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6 See In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Fourth Notice of Proposed Rulemaking and Third Notice of Inquiry, Comments of the National Cable Television Association, Inc., filed November 20, 1995; Reply Comments of the National Cable Television Association, Inc., filed January 22, 1996.

7 In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Fifth Further Notice of Proposed Rulemaking, Comments of the National Cable Television Association, Inc., filed July 11, 1996; Reply Comments of the National Cable Television Association, Inc., filed August 12, 1996.

comparable to their existing service areas; and (3) to minimize all unavoidable interference in the final allocations without preferring digital or analog operations.[8] The Notice includes a detailed proposed Table of DTV Allotments but the Commission also proposed that broadcasters could negotiate allotments other than those proposed and the Notice indicated the Commission would look favorably on a unanimous resolution of such an allotment negotiation.

III. THE COMMISSION MUST ENSURE THIS PROCEEDING ACHIEVES ITS ORIGINAL GOALS

As the record in these DTV proceedings shows, broadcasters are divided on their commitment to deliver high definition programming. The original premise of this proceeding was to facilitate the transition from one technology to another -- not to introduce numerous new services, subsidized by a valuable public resource, spectrum. If the Commission deviates from such a course, and if broadcasters were to obtain enough spectrum to transmit more than one channel enabling them to compete on a subsidized basis with other multichannel video programming distributors, they, like their competitors, should pay for the spectrum or bid for the spectrum in competition with other video service providers.

In the Notice, the Commission avoids the issue of whether broadcasters should receive spectrum capable of providing more than one channel for free, stating that "whether digital licenses should be assigned through competitive bidding" is beyond its statutory authority.[9]

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[8] In an area of some controversy, the Notice proposes two options for DTV spectrum use. The first would designate existing channels 7-59 as the "core spectrum" region on the theory that it is technically best suited for DTV. Spectrum outside the core area (particularly channels 60-69) could be used for DTV during the transition but might be recovered early to be auctioned, used for public safety communications, low power TV, or other purposes. The second option would permit DTV over all channels.

[9] Notice at ¶7. In reiterating its decision to limit initial eligibility for the spectrum to existing broadcasters, the Commission also notes that Congress codified this rule in the 1996

Nevertheless, the mere act of allocating such free spectrum to incumbent broadcasters for a wide variety of competitive digital services constitutes a government decision that will defeat, rather than promote, market forces. It also will disserve consumers at a time when there is an explosive development of digital technology among video and non-video providers.

First, giving broadcasters free use of valuable spectrum to offer multiple video and non-video digital services in competition with other providers who must pay for their distribution networks not only abandons the marketplace in which these services dwell, but also provides an unfair competitive advantage to broadcasters. In light of recent spectrum auctions, advanced television frequencies would be expected to generate billions of dollars in spectrum fees. If broadcast stations were to receive spectrum for free to transmit multichannel video programming and other non-video digital services, they would have an immediate advantage over their competitors, while cable, telephone and satellite companies would still need to invest in costly infrastructure to deliver such services. In the Notice, the Commission even suggests that it might allow broadcasters to use vacant NTSC channels (that remain after digital allotments are made) for additional broadcast or subscription programming both during and after the transition to digital.[10] No such government largesse would be available to broadcasting's competitors.

Second, the Commission's Notice is based on the "assumption" that it will authorize a 6 MHz channel for every full-power broadcast station and suggests that the 6 MHz may be used for services other than HDTV. In this regard, the Notice states that "DTV frequencies or

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Telecommunications Act. Notice at ¶9. Section 201 of the Act provides that if the Commission issues additional licenses for advanced television services, it should limit initial eligibility to persons licensed to operate a television broadcast station or to hold a permit to construct such a station.

[10] Notice at ¶51.

channels may be used to provide a wide variety of services, such as HDTV, multiple SDTV programs, audio, data and other types of communications."[11] There is a serious question, however, about the need for such a large spectrum grant, particularly if the broadcasters do not intend to transmit HDTV signals.[12] Indeed, it is questionable whether the Commission has the legal authority to make such a decision.[13] Nevertheless, the Notice does not seek comment or even question the continued applicability of the analog-based 6 MHz spectrum block per broadcast station for digital television. It simply defines the terms "frequency" or "channel" as a "6 MHz spectrum block currently used to provide a single NTSC television service or the equivalent 6 MHz spectrum block to be used for DTV services."[14]

This "6 MHz" shorthand for a DTV channel is simply wrong. Indeed, the 6 MHz channel allotment may well be out-dated and meaningless in the digital era. The 30 percent of viewers who rely on over-the-air broadcast television can receive digital programming in far less than the conventional 6 MHz NTSC channel. Broadcasters can become digital-capable, as Media Access Project and others have recognized, in 1 or 2 MHz of additional spectrum.[15] Yet once the 6 MHz

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[11] Id. at ¶1, note 4.

[12] Id. at ¶7. The Commission states that "[w]e proceed with this Further Notice on the assumption that 6 MHz channels will be assigned to existing broadcasters, and that there will be a transition period after which broadcasters will return one of the two 6 MHz channels."

[13] See e.g., In the Matter of Advanced Televisions Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry, Comments of Media Access Project, et al., filed November 20, 1995 at 10-13. ("MAP Comments") citing Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

[14] Notice at ¶1, note 4.

[15] MAP Comments at 5-10.

channel is allocated for broadcast digital services, it will be very difficult to recover it for other uses.

Third, in the Notice the Commission reaffirms its commitment to recover one channel after the transition to digital.[16] However, no one can predict if and when the spectrum will be recovered given some broadcasters' apparent desire (and the Commission's apparent inclination) for flexible use of the free spectrum according to market demand. Given this uncertainty (and the number of analog receivers that will continue to be sold while broadcasters experiment), there is no assurance that broadcast stations will ever transition to digital. As CBS's Senior Vice President for Technology, who has been intimately involved in the HDTV issue from the beginning, said: "[A]s long as you sell NTSC receivers, you must keep the NTSC service turned on until that receiver dies."[17]

Our comments should not be read as a rejection of proposals to permit broadcasters to provide HDTV or digital TV. Instead they are consistent with cable's long-standing position that broadcasters should be permitted only one new channel for such services and they must return their existing channels following a prompt transition.

As we have said on numerous occasions, television broadcasters should be entitled to obtain, without charge, one channel for advanced television to offer HDTV or digital television. But they should not be entitled to convert the 6 MHz allocated ostensibly for one channel of HDTV into a nest of multiple signals. If a broadcaster does not use all 6 MHz for HDTV, any unused spectrum should be paid for if used by the broadcaster, or auctioned to any compatible

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[16] Notice at ¶7.

[17] Broadcasting and Cable, April 15, 1996 at 36 (emphasis added).

users. If the broadcaster wants only to do DTV, not HDTV, no more than the necessary minimum spectrum should be allocated.

In addition, broadcasters should not be permitted to offer the one free transition channel for ATV on a subscription basis. We support a simulcast policy that maximizes the amount of advanced television service broadcast in the terrestrial system.

The cable industry is committed to offering broadcasters' HDTV or digital TV service to its customers once broadcasters begin to transmit a digital signal. While standards should be established that allow flexibility as to how the cable operator delivers the broadcaster's HDTV signal to the subscriber, the Commission should not adopt technical standards if the marketplace can develop those standards itself, which it is in the process of doing.[18] Finally, the Commission must ensure that the must carry and retransmission consent provisions of the Communications Act apply to no more than one signal from an ATV/NTSC service pair. We address the standards and must carry issues in more detail below.

IV. THE COMMISSION SHOULD NOT MANDATE A DTV STANDARD

NCTA filed comments in the FCC's proceeding addressing standards for digital television. In our comments, we opposed a government-mandated digital television standard, arguing that it would be an irreversible mistake. We pointed out that in a rapidly developing area like digital technology, a government mandate stifles scientific advancements by creating significant regulatory hurdles to any changes in the standard.[19]

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[18] If, for some reason, the Commission determines that there is a need for standards for advanced television, they should apply only to broadcasting of ATV.

[19] The very history of advanced television teaches us one powerful lesson: a government-mandated standard, though appealing in a short-term way, is the wrong way to go. One need not look back more than a decade ago, when the momentum of the moment directed the FCC to establish an analog

We stressed that the issue is not about supporting or rejecting any particular DTV standard recommended by the Advisory Committee on Advanced Television Service. Rather, the issue is: should the government set any standard? In this regard, we noted that the drawbacks of government-mandated standards are well-established: they freeze competition, limit innovation, and ultimately reduce consumer choice and competition.[20]

We also argued that the digital TV marketplace is already developing quickly, without government standards. More than three million homes now receive DBS-delivered digital television, and cable and MMDS companies will be introducing digital TV services this year.[21]

HDTV standard. Those in favor of government standard-setting would have declared victory with that standard. Today, we recognize that "standard" for the defeat it would have been. Had the standard been set then, the nation would have been saddled with an inferior technology.

Worse, that standard would have been locked into the Code of Federal Regulations, alterable only by protracted government rulemaking. And any amendments would be slowed down even further by incumbents with a vested interest in the status quo standard. As the length of the Advisory Committee process demonstrates, arriving at a standard, let alone changing an established standard, is agonizingly slow work, far slower than the pace of innovation and change in DTV.

[20] The cable industry participated in the FCC's Advanced Television Advisory Committee. In that process, the Commission set out a course in 1987 to facilitate the broadcast industry's transition to an advanced technology. The Advisory Committee, which was comprised primarily of representatives of the broadcast industry, was focused on developing an over-the-air DTV broadcast system. In recognition of its role in the retransmission of broadcast signals, the cable industry, largely through Cable Labs, participated in the laboratory and field testing of the Grand Alliance system to ensure that it was suitable for distribution over cable networks and would allow cable to use its double data rate capabilities. But while the few cable representatives on the Advisory Committee voted in favor of the broadcast DTV system, the industry did not abandon its ability to develop digital transmission schemes that optimize cable's unique characteristics.

[21] A thriving and dynamic digital marketplace is already developing without government standards. Direct broadcast satellite's digital services are in over 3 million homes. The cable industry has launched digital services. Industries as disparate as PCS and cellular, DBS and MMDS, as well as the computer, motion picture, and recording industries, have entered the digital era, without the need for a government agency to enforce a technical standard.

Finally we observed that government-mandated standards are contrary to the goals of the 1996 Telecommunications Act which the FCC is charged with implementing.

It is interesting to note that the other comments filed in the standards proceeding demonstrated the validity of NCTA's approach. A number of industries -- computer, telephone as well as cable -- echoed NCTA's conclusion that the government should not mandate a transmission standard. And, as we emphasized, the sharp disagreements between the broadcast and computer industries over the details of the standard argue for leaving the decision to the marketplace. These scientific and market-implementation disputes, among industries vital to the nation's technological future, demonstrated that a solution not mandated by government would best serve the nation's interest.

In no case should the Commission extend a mandated DTV standard to non-broadcast industries. In this proceeding, broadcasters have urged the Commission not only to adopt the proposed standard for delivery of broadcast DTV, but also they have insisted that the Commission extend the required standard to other media as well as incorporating it into receiver specifications. They do so because of an asserted need for "compatibility" and "interoperability" among media. In this regard, they urged the Commission to "take all steps necessary to ensure that the cable industry adopts the ATSC DTV standard."[22]

But as we have pointed out, the vast majority of the American public receives its video programming by means other than over-the-air broadcasting. This being the case, cable operators, DBS operators and others should be encouraged -- let alone permitted -- to develop

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[22] In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Broadcasters' Comments on the Fifth Notice of Proposed Rulemaking, filed July 11, 1996, at iii.

digital transmission technology which would best serve the interests of their customers rather than be limited by the broadcast industry's narrow interest and narrow over-the-air audience. These technologies should not be held hostage by the broadcast medium when they offer different attributes and capabilities for viewers and when they are already deploying innovative approaches to digital technology.

Cable television is a closed medium -- its carefully contained spectrum can be manipulated and used to deliver digital programming at twice the data rate of over-the-air television. Cable is committed to compatibility and interoperability among media, but those goals can, and should, be accomplished on a private -- not governmentally-mandated -- basis. Indeed, the cable industry has recently agreed upon a digital transmission standard that is capable of delivering to cable customers any digital signal -- that proposed by the Grand Alliance or any other.[23] In announcing that action, CableLabs emphasized:

> The cable industry is committed to delivering broadcasters' digital video signals to cable customers. This specification is compatible with the ATSC standard definition digital video system, with the exception of modulation. The ATSC standard incorporates vestigial sideband (VSB) modulation, versus QAM.
>
> Because of the characteristics of over-the-air transmission, versus cable transmission, and the consequent differences in bit rates, this difference in capacity is logically dealt with at the cable headend. The difference in modulation also can be dealt with at the headend, and by having this capability, cable operators will be able to handle any digital signal from whatever source and deliver those signals to cable customers.[24]

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[23] See "Cable Moves To De Facto Standard For Digital Set-Tops, Modems," Communications Daily, October 4, 1996 at 3.

[24] Press Release, CableLabs, October 3, 1996 at 2.

With hundreds of cable programming services available and new advanced services available now and on the horizon, the cable industry should be able to use its systems to maximum efficiency to serve its customers in an increasingly competitive multichannel provider market. Codifying the broadcasters' DTV standard in page after page of government regulations will only stifle these developments and place a major stumbling block in the path to future innovation.

V. THE COMMISSION SHOULD NOT EXTEND MUST CARRY AND OTHER REQUIREMENTS TO INCLUDE NEW DIGITAL SERVICES

NCTA also participated in the FCC's rulemaking proceeding addressing advanced television "policy" issues. In our Comments, we opposed broadcasters' efforts to expand cable must carry obligations to include new digital services. We observed that, at the same time that broadcasters seek the freedom to experiment with digital technology, they would put cable in a strait jacket in its efforts to serve its customers. By saddling cable with expanded must carry obligations, they would deny cable operators the very flexibility that broadcasters seek -- the ability to innovate and respond to market demands. They would force operators to carry multiple streams of digital programming services from every broadcast station for an indefinite period of time at the expense of cable operators' editorial choices. Such an action would also significantly impede cable programmers' access to viewers. This carriage obligation would apply whether or not consumers want these services.

In our comments we argued that, in the 1992 Cable Act, Congress only directed the FCC to alter its must carry rules to ensure signal quality once analog stations changed to conform to new ATV standards. This provision of the Act says nothing about increasing cable's carriage obligation. Moreover, we said that, given the uncertainty as to whether the existing must carry

rules will withstand constitutional scrutiny, it would be unwise for the Commission to further intrude on cable operators' and cable programmers' First Amendment rights by imposing carriage obligations for new digital services that were not even anticipated when the must carry regime was enacted and for which the FCC has no factual record support. If any digital carriage requirements are adopted, NCTA strongly urged the Commission not to impose on cable systems the cost and burden of the broadcasters' transition to digital.

CONCLUSION

For the reasons stated above, the Commission should clarify its broad policy goals in this proceeding, particularly the issue of whether spectrum should be allocated for one or multiple digital channels, before resolving the channel allocation scheme.

Respectfully submitted,

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