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November 26, 1996

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NOV 27 1996

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D. C. 20554

Re: Comments of Abacus Television (Corrected)
MM Docket No. 87-268
Advanced Television Systems

Dear Mr. Caton:

DOCKET FILE COPY ORIGINAL

Please find attached the original and nine copies of the Comments of Abacus Television in the above referenced proceeding. These Comments to the **Sixth Further Notice** are being refiled to incorporate some corrections to pages 17 - 22 that were not incorporated in the version of our Comments filed originally, on November 25, 1996.

Please make reference to this corrected set of Comments, and if possible ignore the earlier filed document. If you have any questions with regard to this submission, please contact the undersigned.

Respectfully submitted,

ABACUS TELEVISION

Benjamin Perez

Benjamin Perez, Owner

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NOV 27 1996

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

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

COMMENTS OF ABACUS TELEVISION

Abacus Television ("Abacus") operates three Low Power Television ("LPTV") stations, W28AW, Greensburg, PA, W09CF, Jacksonville, FL, and W20AN, Washington, PA. In addition, Abacus has under construction and expects to activate by the end of the first quarter, 1997 eleven (11) additional LPTV stations. Fourteen (14) of these LPTV stations are configured in a "cellular television network" which gives Abacus continuous coverage of the Steubenville, OH - Wheeling, WV, Youngstown, OH, Johnstown-Altoona, PA, and Pittsburgh, PA television DMA with the added flexibility of inserting local programming and local advertisements addressed to the fourteen (14) separate smaller cities that make up this area. The population served by Abacus's network equals the seventh largest television market in the United States. Obviously, Abacus has much to lose if the Commission's proposals in its Sixth Further Notice on Advanced Television Systems, MM Docket No. 87-268 are not revised to provide for the protection and accommodation of the LPTV industry in the digital transition process.

Abacus is only one of the numerous new, small businesses that make up this, the most rapidly growing, sector of the free, over-the-air broadcast industry. Notwithstanding almost ten years of

freezes limiting the availability of television licenses where they are wanted most (within a 100-mile radius from the reference for thirty largest DMA's) the Commission is issuing almost one hundred new **licenses** per month. In addition to the almost two thousand licensed LPTV stations, there are approximately six thousand television translator stations, many of which will be destroyed at the onset of the Commission's outstanding proposals; all of which will be destroyed eventually by being left out of the Digital Television ("DTV") conversion process.

Stated succinctly, there are approximately two hundred fifty operating LPTV stations in the top thirty, most crowded markets. About one-third of these stations operate outside of channels 7 - 51, the "core channels" that would be reserved for future television service. Another one hundred fifty LPTV stations outside of the major markets operate on channels 2 - 6 and another two hundred LPTV stations outside the major markets operate on channels 52 - 59. In addition over two thousand translator stations operate outside the core channels, a majority of them being concentrated on channels 60 - 69, **because the Commission specifically instructed them to move there when they were displaced from channels 70 - 83.** The LPTV industry now passes seventy million homes. Because each LPTV station only reaches a fraction of its particular DMA even if it has substantial Homes Using Television ("HUT") within its service area, that viewership becomes diluted in the averaged for the entire DMA. HUT levels fall too low to achieve a reportable number consistently, and certainly not

during the "sweeps". Absent commercial audience measurements, actual viewing levels can only be projected from anecdotal information, such as call-backs and letters. LPTV stations are commercial businesses. They would not constitute such an explosive growth sector if they had few viewers. In numerous instances they bring the only foreign language television service to large population sub-groups and therefore can be presumed to have large (e.g.) fifty percent weekly penetration ("cumes") of those communities. Pay-to-play formats such as home shopping, Video Jukebox Network, and donations supported religious networks make heavy use of LPTV to gain entry into markets where full service television affiliations are not available. Those LPTV networks are "billing" heavily, indicating significant viewing of their specialized formats. And in several instances where small regional or "cellular" networks of LPTV stations have gotten ABC, Fox, UPN or WPN affiliations, those LPTV networks have been able to deliver first-, second- and third-place market shares notwithstanding their limited regional signal reach.

Abacus Television has carefully reviewed the comments submitted by the Community Broadcasters Associations ("CBA") and supports their proposed revisions to the DTV proposals. CBA, as the representative of almost one third of the LPTV industry, including a majority of the LPTV stations that focus on the local production and insertion of locally oriented programming, its, comments warrant special weight and deference. The National Translator Association ("NTA") represents another major industry

segment. NTA's focal issue is the poorly-conceived Commission proposal to take back television broadcast channels to auction them to, users of other nonbroadcast technologies, particularly channels 60 - 69. Abacus Television agrees with and supports NTA's request that the Commission delete these proposals from its DTV implementation plan.

The proposal to reallocate television broadcast spectrum to new services would be a public policy error of magnitude rivaled only by the similarly inequitable, unsupported, destructive, thoughtless and racially insensitive decision to destroy the large market, heavily minority owned LPTV industry, in exchange for the improved and uncertain benefits from moving the television broadcast industry forward into the telecommunications digital future. By failing abjectly to count or, to document the effects upon two thousand LPTV licensees, on fifteen hundred LPTV permittees, and on six thousand translator stations, the Commission reached the patently wrong, but fortunately, "tentative" conclusion that channels 60 - 69 were lightly used and that the core channels possessed sufficient digital capacity to accommodate all existing "broadcasters".

So far, the Commission also has ignored the supply-side effects were it to reallocate hundreds of Megahertz of spectrum to mobile radio and other similar technologies. Based on undocumented claims of spectrum shortage made by the Land Mobile Radio and cellular telephone radio industries ten years ago, prior to their implementation of digital services such as PCS, the Commission

concluded that the spectrum was needed by and would be handsomely paid for by companies proposing new digital technologies to further serve these markets. A caution flag should go up when it is noted that two hundred Megahertz SMR are unbuilt and have yet to find subscribers. Hundreds of public safety channels in the 800 and 900 MHz bands are empty because municipalities are unwilling to fatten local public safety budgets enough to accommodate the cost of building systems on these frequencies. Several new PCS, LEO, VSAT, IVDS and other mobile wireless systems soon will come on line in every major market, and all of these have yet to find subscribers. Certainly the perception of private radio and wireless common carrier spectrum shortages had some basis in 1985. But the assumption that these shortages persist, into 1997 or say into 2001 is sheer speculation and surmise.

Abacus Television appreciates the intensity of the Commission's and the U.S. Congress' romance with budget balancing through auction revenues. Lest this love lead to blindness, the Commission should analyze the costs of neglecting the LPTV industry's digital spectrum needs before consummating its marriage with the auctioning of broadcasting spectrum. The LPTV and translator industries are made up of a thousand small businesses (small in every definition of that term) that employ tens of thousands of local residents. The local advertisements they transmit help make possible the survival of other thousands of small businesses that cannot afford to advertise on national media. Those businesses employ tens of thousands more employees. All of

these small businesses pay local, state and Federal taxes. And all of these employees of the LPTV industry pay state and Federal income taxes. The Commission has made no attempt to quantify or otherwise measure these job and revenue losses and other costs of not providing for the transition to digital of LPTV the industry. How can the Commission rationally perform the cost benefit analysis needed to determine that its actions are in the public interest when it has not examine the down side of what it proposes?

Abacus Television relates these negatives only because of its disappointment over the indifference with which the Commission thus far, has responded to the repeated alerts regarding these shortcomings urged by Abacus, other licensees and other industry representatives repeatedly since 1992. Five years down the road, the Commission still is proceeding without having quantified how the LPTV stations that will be displaced by the channel 60 - 69 take back, by the channels 2 - 6 and 50 - 59 take-back, or by the tentative decision to allot DTV channels without regard to use of those same channels by LPTV licensees.

The Commission likewise so far has failed to quantify the benefits of choosing to include Part 74 licensees in the digital conversion process. As Abacus quantified with a detailed study submitted with its comments to the Fifth Further Notice, seven-eights of the racial minorities in television broadcasting hold LPTV, rather than full service television licenses. Recent Commission spectrum auctions, which of necessity had no minority quotas or minority-specific incentives, conclusively demonstrate

that the minority business community has not yet expanded to the point that it can compete in the auctioning of spectrum so as to garner a statistically significant number of minorities winning authorizations.

The Commission, by leaving LPTV out of the digital conversion process as proposed, would kill off seven-eights of the minority television licensees and then distribute the recaptured spectrum using a methodology that results in virtually no minority participation. When the costs are included in the evaluation of that process the outcome cannot be squared with the Commission's repeated statements that participation of minorities in the future of telecommunications is of vital interest to the public.

The Commission similarly fails to analyze the number of small businesses in the LPTV industry, compared with the business size of either full service broadcasters or, of the projected winners of the future auction broadcast spectrum or nonbroadcast. LPTV, to a company, is made up of small businesses. Full power television licensees increasingly are being concentrated in the hands of large and very large businesses. Virtually all of the winners of recent Commission spectrum auctions also were big businesses. In short, The Sixth Further Notice proposes to take spectrum away from small businesses, destroying those businesses, and sell-that spectrum to big businesses.

Abacus Television does not wish to focus its comments only on what the Commission is proposing that is wrong or misguided. If the Commission narrowed its objectives for MM Docket No. 87-268 to

adopting the best possible digital television standard and mapping out a conversion plan for the broadcast industry, both full power and low power, the DTV conversion process could be accomplished and, five times as many existing licensees would be given an opportunity to participate in the future of telecommunications. Tens of millions of viewers would continue to enjoy the programming brought to them by Part 74 licensees, and the number of minorities receiving DTV authorizations would be increased eight-fold.

The Commission should not and cannot include the raising of revenue as one of its objectives in the spectrum reallocation process. the raising of revenue. The record in this proceeding already shows how poorly equipped the Commission is for quantifying the costs associated with destroying existing licensees, as a by-product of reclaiming spectrum for auction. Congress was given the power of the purse and the power to tax. There lies the revenue raising expertise. Let the experts raise revenue, let the Commission regulate the use of spectrum.

Abacus firmly believes that with reasonable, attainable and equitable adjustments to the proposals in the Sixth Further Notice the Commission can dramatically improve the outcome of its digital conversion plans and at the same time dramatically reduce if not completely eliminate) the unnecessary mass destruction of the LPTV industry, its broadcast service to the public and the dozens of minority licensees and hundreds of small businesses that make up the Commission's Part 74 licensees. Abacus Television will, focus the remainder of its comments on some areas of change to the Sixth

Further Notice that will help to correct the problems and deficiencies described above.

NEGOTIATED ALLOTMENTS, Paragraphs 44 - 47

In Section III, §F, Negotiated Allotments/Assignments, the Commission proposes to allow negotiated settlements among "broadcasters" as a part of the DTV assignment process. Although the Sixth Further Notice states that "all affected broadcasters" must agree to the revised allotment or assignment plan to be substituted, the definition of "broadcaster" in this proceeding has been narrowed to exclude licensees under Part 74 of the Commission's rules. In particular, Part 74, Subpart G - Low Power TV, TV Translator, and TV Booster Stations, have not been included in the word "broadcaster" in this proceeding, notwithstanding their being treated consistently as broadcasters for every other purpose over the last thirty (30) years in the case of translators and the fifteen (15) years in the case of LPTV stations.[1]

The proposed settlement policy should be revised in two significant respects. First, any settlement plan must include the

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[1] When the Commission considered the public interest considerations with respect to minority ownership, the diversity of ownership of broadcast licenses, the emergency broadcast system, the need for must carriage of local broadcast signals by CATV, its type certification requirements, its broadcast signal modulation and quality requirements, its political advertising, fairness and personal attack rules, its retransmission consent and copyright requirements, its foreign ownership limitations, and its dozens of formal and informal policies regarding broadcast licensee conduct and broadcast programming content, then in each instance Part 74 licensees paid these "taxes" for the rights to be a part of the broadcast industry. Now, as the Commission considers rewarding broadcasters for their public service with a DTV conversion channel, for the first time, LPTV licensees are not categorized as broadcasters.

consent of any Part 74 licensee affected by the proposed revision to the allotment plan. Second, if the Commission does not amend its settlement proposal to require inclusion of Part 74 licensees in the settlements, it must at a minimum, state that a settlement proposal will not be accepted if it would result in an authorized Part 74 station being displaced that would not have been displaced under the Commission's proposed table.

This revision in the approach to private settlements is crucial as a matter of fairness and due process. As the proposal now stands full service "broadcasters" can agree only amongst themselves to shuffle the local channel allotments so that their DTV channels displace or terminate service by existing LPTV stations. Uncorrected this settlement mechanism is an open invitation to anticompetitive abuse by full service TV broadcasters.

An underlying precept of the Telecommunications Act of 1996 was that the Commission should seek to level the playing field between various sectors of the communications industry, so that efficiencies of the market place could be optimized. A playing field that permits one group of broadcast stations (Part 73) to collude to eliminate the channels of another group of broadcast stations (Part 74) is not a level playing field, is anti-competitive, is contrary to administrative due process, and may be a violation of the Anti-Trust Laws.

In the Sixth Further Notice, at paragraph 52, the Commission also seeks comment on the "Senator Pressler Plan" for a spectrum

overlay proposal, designed to increase the future auction value of spectrum retained for broadcast use. Former Senator Pressler's proposal is defective, as well as derogatory of the LPTV industry, because Mr. Pressler like the Commission focuses on protecting existing full power licensees, and ignores two thousand LPTV stations and six thousand translator stations in service.

The principle source of television for millions of rural and small town viewers appears to have been overlooked by this spectrum overlay proposal. The overlay plan similarly ignores the numerous large market, minority owned LPTV stations. The overlay proposal appears to be an unintended by product of the Commission's failure even to analyze or account for translators and LPTV, in the Notices leading up to this Sixth Fourth Notice. The overlay proposal could be revised to include protection of all broadcast licensees, both Part 73 and Part 74. In that event Abacus Television submits, the only remaining concern would be to assure that the interference criteria defined in the future sharing would be adequate to provide reasonable protection to broadcast audiences.

MINIMIZING THE IMPACT OF THE DTV ALLOTMENT AND SPECTRUM RECOVERY PROPOSAL ON LPTV

Having the Commission recognized for the first time in this Sixth Notice that the two thousand LPTV stations that are on the air doing broadcasting, and, that activities are in the public interest, the Commission solicits comments on minimizing the impact of its DTV allotment and spectrum recovery proposals on low power TV operations (para.67). The first, most logical and most efficient way to minimize the negative impact of DTV on LPTV would

be to make the DTV allotments in a manner that (consciously) avoids unnecessary displacement of LPTV stations. In a market where there are other channels that could be used for a DTV channel that do not displace a LPTV station, allotting a DTV channel to the LPTV-occupied channel is irrational-unnecessarily injuring, if not completely destroying, that established LPTV incumbent broadcaster.

Being "displaced" is not a minor irritation to a constructed and licensed LPTV operator. Most solid state transmitters cannot be modified by more than one or two channels up or down, without being sent back to the factory for the replacement of the crystal and the input and output tuning tanks of each amplification stage. This is a process that takes weeks of time and hundreds, if not thousands of dollars. For a small business, being off the air for two months plus paying $600 in round trip shipping charges plus 2-3,000 charges by the manufacturer, for new channel tuning may be enough to put a station out of business.

In addition to the transmitter rechannelizing costs, taking an antenna down from a tower, shipping it to the antenna manufacturer for retuning, and placing it back on top the tower can cost another $10-15,000, assuming the antenna can be modified. Most UHF slot antennas can be tuned only over 1/3 or 1/4 of the UHF band. If a channel move crosses one of the resulting channel grouping boundaries, an entirely new antenna must be purchased at a cost of up to $40,000.

Lastly, many LPTV stations lease space on towers that are grandfathered, either for zoning or for tower-loading standards.

If a licensee is forced to take the antenna down for retuning, the station may not be allowed to put the antenna back up. Particularly within seventy-five miles of the top fifty largest television markets, virtually all of the usable, reasonably sized spectrum spaces for LPTV stations have been exhausted. Displaced licensees in these circumstances will not find another channel, even if they could afford the transmitter and antenna modifications.

In summary, displacement is a costly, disruptive, and business endangering process that will significantly injure LPTV stations. A significant number of stations will not merely be displaced when a DTV allotment is dropped in on their channel, but will be **terminated.** Such termination will result from financial strangulation, or from the absence of substitute channels, or possibly from zoning or tower load restrictions that come into effect when the licensee attempts to rebuild its facility.

Abacus recognizes that there will be instances where displacement is inevitable. For example, the channel occupied by the LPTV might be a hole "big enough" to accommodate a full power DTV channel, and in the same market there might be a smaller hole that can accommodate the LPTV licensees' existing service area, but not a full power DTV allotment. In that factual circumstance it would be in the public interest for the full power licensee to pay the cost of moving the LPTV licensee to the new channel so that it can occupy a second, DTV channel.

Abacus also recognizes that there will be a few markets where,

notwithstanding the use of every technique and tool proposed by the LPTV industry to optimize the availability of new DTV and LPTV displacement channels, some licensees will go without a DTV channel unless an affected LPTV station is terminated. To the extent the LPTV station began broadcasting to the public first, and to the extent LPTV stations originally were conceived as being secondary, as a technical matter, only to full power NTSC stations, it seems patently unfair to both the viewing public and to the LPTV licensee to reclassify its service as "secondary" now meaning, secondary to the later arriving DTV licensee as well as to the various technologies the Commission has proposed for the reallocated broadcast channels.

At a minimum, that LPTV licensee should be compensated with the fair market value of the business being destroyed and the licensee being destroyed by the Commission's gift of its channel to the full service TV licensee. The full service television licensee should pay at least that much for what it is being given. Similarly in the case of LPTV licensees displaced by auction winners, the new spectrum user should compensate the LPTV licensee for the loss of its licensee and business.

In the limited number of instances where there are not enough full power DTV channels and not enough displacement channels for existing LPTV licensees to be preserved, full power licensees should be required to convert on channel, rather than occupy two channels for a period of time. Furthermore, the very fact that an existing television station is being forced off the air with no

displacement channel conclusively proves currently that there is not enough broadcast spectrum to take channels away from broadcasting and sell them outright to the exploiters of non-broadcast technologies. At least in those markets the Commission should not proceed with its proposals to reallocate Channels 2-6, 52-59, and 60-69.

Requiring some of the full power stations to either convert on channel or delay conversion until later in the conversion process, e.g. until the lead stations turn in their analog channel, should not work a hardship on the full power licensees. Numerous licensees have indicated an inability or reluctance to move forward within the time table constraints proposed by the Commission because of limited financial resources. Those sectors of the full power broadcast industry argue that they cannot afford the cost of electricity to broadcast in ATV when there is no one out there to watch it, and therefore no advertisers to pay for it. If these shallow pockets are permitted to wait until later when DTV television set penetration has reached the 90 percent mark, there financial concerns are addressed and existing LPTV service will be preserved at least that additional 7-10 years or perhaps perpetually on the turned-in analog channels.

To summarize where the Commission is on this problem area, the Commission has spent an extraordinary amount of staff resources to study the spectrum uses of the full power stations that constitute the most valuable, most valued and most wealthy sub-group of all of the broadcast industry - the full power television licensees,

particularly those in the major markets. Based on this research the Commission has proposed an allotment plan carefully tailored to address their needs and desires, but no one else's needs. The Commission has spent almost no energy studying the spectrum uses of the low power television stations that constitute the newest, most small business owned, most minority-owned, most specialized programmed and, not surprisingly the least well-funded sub-group of all of the broadcast industry - the low power TV industry. The Commission's DTV proposal was crafted before the Commission gave any study to the LPTV industry and then was proposed without revision to reflect what the Commission learned during its eleventh hour cursory review. As a result, the current proposal unnecessarily destroys a large amount of existing service, decimates the ranks of minority broadcasters, wipes out hundreds of small businesses, all with no quantification of the costs to these parties or the resulting harm to the public.

CONTINUED USE OF CHANNELS 3, 4 AND 6 FOR BROADCASTING

The Further Notice at paragraph 73 justifies the deletion of channels 3, 4 and 6 from television use in part because of interference to cable terminal devices, video cassette recorders and FM radio channel 253. As long as the Commission is redesigning the US television system for 21st century use it should take this opportunity to correct mistakes of the past. In Europe Television Channel 37, which is not available for over-the-air broadcast is used for cable boxes and VCR's. Since these low level uses pose no threat to radio astronomy the use of Channel 37 avoids the Channel

3 or 4 problem, making an otherwise wasted channel available everywhere. The Commission should mandate this change in the U.S. as well, so that by the end of the transition period all of the channel 3 and channel 4 devices could be retired along with the analog television they service.

Television Channel 6 when operated at the power levels specified for full power television may continue to be a concern to FM radio reception, although we note that the Commission does not discuss how a digital Channel 6 differs interference-wise from its analog counterpart. At LPTV signal levels, however, the area of possible interference is far smaller and in fact frequently will not extend beyond the hill top transmitter sites usually used for tower sites. Since these locations are typically uninhabited LPTV Channel 6 to FM radio interference typically only exists where there are no people. This suggests that even if the Commission unwisely decides to take Channel 6 out of full power television use it remains reasonable to continue the use of Channel 6 for LPTV.

LAND MOBILE RADIO - LPTV SHARING

The Further Notice at paragraph 75 addresses co- and adjacent-channel sharing between land mobile radio and full power television but, once again ignores the 8,000 Part 74 licensees serving the public. Abacus is of the opinion that because of advances in digital technology, the entry of the CATV, IVDS and wireless cable industries into the distribution of mobile radio, and the recent allocation of several large blocks of spectrum to mobile radio that there is no present, near future or even or distant future spectrum

shortage for mobile radio communications. As a result, at this juncture the Commission should terminate all present and future consideration of land mobile - television sharing of UHF spectrum and return those UHF channels now held in reserve to broadcast use. The Commission has justified not accommodating LPTV with DTV conversion channels with claims that there is not enough UHF spectrum to even comfortably accommodate the full power television licensees with DTV channels. If that is truly the case then going forward with the reallocation of UHF channels to land mobile is unconscionable. Those channels are now needed to accommodate LPTV station with digital conversion channels.

Given the far lower transmitter powers used by LPTV stations, the sharing of UHF spectrum between LPTV is far more practical and efficient than sharing between full power television and land mobile. If the Commission insists on going forward with the reallocation of UHF channels to land mobile, that reallocation should be on a co-primary shared basis with LPTV.

The Commission has experience with adjacent channel operation based on the Channels 14 and 69 adjacencies that now exist. The Commission should merely extend the same D/U's to co-primary land mobile-LPTV sharing. In addition, other terrain sufficient considerations such as terrain shielding and interference resulting only in unoccupied areas should be made a part of the interference standards for such sharing. Lastly, the Commission should give serious consideration to time sharing, where LPTV licensees use the channels at night when land mobile requirements drop dramatically.

INTERIM FIXES TO PRESERVE EXISTING LPTV SERVICE

At paragraphs 69 and 70 the Commission seeks comments on ways of preserving LPTV service during the transition period with the expectation that once the analog channels are turned in by the full power broadcasters there will be sufficient capacity in the core channels to relicense existing LPTV stations. Abacus explicated the costliness of being displaced above. First and foremost the Commission should avoid the unnecessary displacement of LPTV licensees. In addition to the equipment costs described above LPTV licensees have a major investment in their channel identification which is inevitably destroyed when they are successfully displaced even if the new channel has as good a coverage area as the old channel. It takes years of effort and thousands of dollars to educate the public about where your programming is on their television remote control. When a station changes channels that costly education process has to be repeated.

If LPTV stations are **necessarily** displaced it is commendably that the Commission is willing to consider accommodating on a replacement channel. Abacus and LPTV licensees like it have labored in many cases for many years to construct their stations and build their audiences, often out of their personal savings at a great cost to themselves and their families. Faced with extinction, any LPTV licensee would be happy to occupy a substitute channel rather than be put out of business. The Commission should, however, consider two additional replacement channel scenarios.

First, perhaps on channels 3, 4 and 6, and/or channels 50 - 55 or channels 55 - 60 the Commission should consider a **permanent** authorization for a smaller class of television stations. Why move this industry to another group of channels only to move them yet again in less than 10 years? Secondly, whether it be two channels within the core channels or two channels outside the core channels, where LPTV stations that are displaced but given replacement channels they should be made primary on their new channel. Having undertaken the cost of building their facility not once, but twice, these licensees deserve protection from future dislocation.

The term "secondary service" as it has been used since the earliest licensing of TV translators in 1956, refers to the obligation of an operator not to cause destructive interference to primary service, or to earlier licensed secondary services. Where interference occurs, it is the obligation of the operator to take immediate corrective action, and, if that fails, to cease operation altogether. In practice, the Commission has administered the translator and LPTV services wisely, so that interference complaints are extremely rare, and a license causing interference almost always has been able to clear the interference case by modifying facilities and, if need be, by moving to another channel. In the TV translator and LPTV services, the licensees have believed for years that their authorized service would continue indefinitely, and such belief has been reasonable. Experience with the reallocation of Channels 70 and 83 does not belie, but strongly confirms this conclusion. Operators in those bands were given

ample notice of the reallocation, and then received special handling of applications for channel changes toward the recommended new channels, 60 through 69. No station was terminated unless and until a new operator was ready to switch on service on the new channel. As a practical matter, few if any stations had their service terminated as the result of the change.

In contrast, in this Docket, through and including the Fifth Further Notice, essentially no express consideration was given to TV translator and LPTV service impact. A Draft DTV Table of Allotments was prepared for this Sixth Notice, using two key assumptions: (1) That translators and LPTV's would not need to be accommodated with DTV second channels; (2) That for purposes of selecting new, second channels for DTV, LPTV's and translators should be treated as though they did not exist. Incredibly, no rationale was offered for these destructive policies. In this context, "secondary" is not a framework for analysis, but rather it a barren label, an epithet. The Commission has not yet explained in a rational manner why these fundamental choices make sense or serve the public. Of course, Abacus submits that the choices cannot be rationally explained. Even where full accommodation of translators and LPTV's is not possible, maximum feasible accommodation is the only defensible policy.

In closing, Abacus respectfully submits that the licensees of the LPTV industry have done everything necessary to justify a Commission public interest finding that they should be awarded digital simulcast channels and primary status on the same basis as

full power licensees. At a minimum, as set out in detail in comments by members of the LPTV industry to the Fourth and Fifth Further notices the Commission should accord existing Part 74 licensees the "second bite of the apple", before it makes this spectrum available for either new DTV licensees or new uses. This spectrum is occupied and is used heavily by these Part 74 licensees to bring needed free over-the-air broadcast services to segments of the population that are greatly underserved by the larger, Part 73 television industry. Refinement of the proposal in the Sixth Further Notice can be done in a manner which does not frustrate the fundamental objective with which the Commission has been charged such as planning a conversion to digital television.

WHEREFORE, for the foregoing reasons, Abacus Television respectfully submits the above Comments and proposed changes to the Sixth Further Notice.

Respectfully submitted,

ABACUS TELEVISION

Benjamin Perez

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