Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

TO: The Commission

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BROADCASTERS CAUCUS PETITION FOR
FURTHER NOTICE OF PROPOSED RULEMAKING

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BROADCASTERS CAUCUS PETITION FOR
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I. SUMMARY AND INTRODUCTION

The undersigned broadcast organizations (the "Broadcasters Caucus" or "Caucus") hereby petition the Commission to issue a further notice of proposed rulemaking ("Proposed Notice") regarding the establishment of non-governmental coordination committees to process and evaluate proposed changes to the Commission's table of advanced digital television ("DTV") allotments/assignments (the "DTV Table") and other related issues.[1] Broadcasters first proposed the establishment of such a committee in January 1995 to make recommendations to the Commission on DTV assignment issues.[2] The Sixth

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[1] The Broadcasters Caucus is an ad hoc group of broadcast organizations, including ABC, ALTV, APTS, CBS, Chris Craft, Fox, MSTV, NAB, NBC, PBS, and Tribune, that was formed in 1990 as a part of the Advanced Television Systems Committee to represent broadcasters on DTV issues. The term "Broadcasters" refers to the more than 200 signatories to the Broadcasters' Comments on the Sixth Notice, submitted on November 22, 1996, and the signatories to at least eight previous joint filings.

[2] See Broadcasters' Proposed ATV Allotment/Assignment Approach, MM Docket No. 87-268 (January 13, 1995) ("Broadcasters Allotment/Assignment Approach"), at 29-32.

Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996) ("Notice") endorsed the proposal (11 FCC Rcd at 10111), and we urge the Commission to solicit comment from interested parties on a concrete plan as soon as possible. The expeditious issuance of the Proposed Notice and subsequent action will abet the Commission's efforts to finalize the DTV Table and to provide for the fair and efficient adjustment of the DTV Table as the migration to DTV moves forward. Consideration of the issues presented herein should in no way delay action on the Fourth and Sixth Further Notices of Proposed Rulemaking in this proceeding.

* * *

Broadcasters' Comments on the Notice, filed on November 22, 1996 ("Broadcasters' Comments"), expressed the view that the DTV channel assignment process must be dynamic and responsive to facility and channel assignment changes proposed by prospective and future DTV licensees.[3] That over 20 individual broadcast organizations filed comments identifying a need for a DTV channel adjustment based on the draft FCC DTV Table indicates just how critical is the need for a coordinating committee to assess the various requests that will arise. The following factors will affect the development and ongoing adjustment of the final DTV table:

- System-wide adjustments, if any, to the planning factors or principles underlying the DTV table;
- NTSC database changes related to database errors and/or station modifications and new applications;
- Individual DTV station facility changes, including those to increase power or tower height to maximize station coverage or reduce operating costs;

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[3] See Broadcasters' Comments, at 47-53.

- Requests for DTV channel changes that are not based on facility changes;
- New applications for DTV channels once the transition is underway;[4] and
- Applications for new or replacement translator and Low Power stations.

The Broadcasters Caucus attempted to implement a rudimentary form of coordination immediately after the release of the Notice.[5] The Caucus created 10 regional groups to organize meetings of stations throughout the country and created a central office to provide coverage maps of the Commission's or the Broadcasters' DTV channel assignments as well as other information sought by stations. This process will continue until the Commission acts on this petition. However, although this coordination process has assisted the industry in making constructive comments to the Commission, it cannot substitute for an independent coordination structure operating under the Commission's supervision.

II. THE COMMISSION SHOULD ESTABLISH A COORDINATION PROCESS USING SOME OF THE SAME PRINCIPLES THAT UNDERLIE THE PRIVATE LAND MOBILE FREQUENCY COORDINATING COMMITTEES

The procedure by which the Commission established rules for the frequency coordination of private land mobile radio services and then revised those rules pursuant to Congress' direction provides a good starting point for the Commission in this process.[6] For example, the general principles that the Commission enunciated in 1969 to govern the private land mobile coordination committee should be applicable to the DTV coordination

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[4] It should be noted that Broadcasters' Comments (at 52) propose that the Commission refrain from assigning unassigned DTV channels or making new allotments throughout the DTV station construction period. But see Comments of the Association of America's Public Television Stations, at 24 (proposing that the Commission protect public television channel reservations by allotting digital channels to replace vacant noncommercial NTSC allotments that were deleted to accommodate the DTV transition).

[5] See Broadcasters' Comments, at 54-55 and Appendix A.

[6] See 47 C.F.R. § 90.175.

committees as well. With respect to the land mobile committees, the Commission stated that, inter alia, they would have to be representative of all eligibles; their recommendations would be advisory only; the Commission would remedy discrimination or other abuses; coordination fees would be required to be reasonable and cost-based; and all requests for coordination would be considered.[7] In 1982, Congress amended the Communications Act to recognize the role of frequency coordinators in the private land mobile services and to affirm the Commission's authority to use them.[8] Shortly thereafter, in 1983, the Commission commenced a proceeding to improve the use of frequency coordinators in the private land mobile radio services.[9]

The Commission decided to create a single coordinator per radio service or frequency group, noting that with multiple coordinators for a single service it would be difficult to keep track of pending frequency selections.[10] It then required coordinators to:

> a) provide coordination services on a nondiscriminatory basis by reviewing applications for new stations and station modifications (applications for specific frequencies were required to be accompanied by technical showing);

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[7] See Frequency Coordination in the Industrial Radio Services, 16 FCC 2d 305, 306 (1969). In 1958, the FCC had amended its rules specifically to recognize coordinating committees. Applicants could obtain frequency recommendations from these committees and coordinator recommendations would be given consideration in assignment decisions. See In re Amendment of Part 11, Rules Governing the Industrial Radio Services, To Delete, Modify and Create Services and To Effect Changes in the Availability of Frequencies, First Report and Order, 23 Fed. Reg. 4784 (June 28, 1958).

[8] The Communications Amendments Act of 1982, P.L. 97-259, 96 Stat. 1087, September 13, 1982. Section 331 of the Communications Act of 1934, as amended, is codified at 47 U.S.C. § 332.

[9] See In re Frequency Coordination in the Private Land Mobile Radio Services, Notice of Inquiry, 48 Fed. Reg. 35149 (Aug. 3, 1983); In re Frequency Coordination in the Private Land Mobile Radio Services, Notice of Proposed Rulemaking, 49 Fed. Reg. 45454 (Nov. 16, 1984).

[10] See id. at 1119-1121.

b) execute this task by (i) checking for completeness, accuracy and compliance with FCC rules; (ii) identifying the most appropriate frequency (according to its own methodology and using its own enhanced databases); and (iii) sending the application and the recommendation to the Commission;[11]

c) process applications in order of receipt even if this did not lead to actions in the same order;[12]

d) help resolve post-licensing disputes;[13]

e) forward a recommendation to the Commission within 20 work days of the request (speed-of-service requirement);[14]

f) provide service on a reasonable cost-based fee schedule;[15] and

g) coordinate with a single nationwide point of contact with the Commission.[16]

The Commission decided to oversee the coordinators and, where it "appear[ed] that a coordinator ha[d] established a pattern of failing to perform in accordance with the requirements adopted . . . or [was] otherwise acting contrary to the public interest[,]" the Commission would initiate an inquiry.[17]

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[11] See In re Frequency Coordination in the Private Land Mobile Radio Services, Report and Order, 103 FCC 2d 1093, 1100, *recon. denied*, Memorandum Opinion & Order, 61 RR 2d 148 (1986). However, the Commission was careful not to over-burden the coordinators. Thus, coordinators were not required to make a final determination on eligibility, permissible usage, or whether the use of a particular communication facility is in the public interest. See 103 FCC 2d at 1103.

[12] See 103 FCC 2d at 1104. The Commission also encouraged, but did not require, coordinators to circulate requests by email to facilitate decisions on interservice sharing.

[13] See id. at 1107.

[14] See id. at 1108.

[15] See id. at 1115.

[16] See id. at 1116.

[17] Id. at 1144.

III. THE COMMISSION SHOULD CRAFT A COORDINATION PROCESS THAT ACCOUNTS FOR THE UNIQUE FEATURES OF DTV

Many of the principles that govern the private land mobile service coordinating committees are applicable in the DTV context, and the Commission should create a similar coordination process for the DTV service. This can be done without resort to legislation so long as the Commission retains ultimate decisionmaking authority. The legislation enacted in 1982 merely recognized the Commission's existing authority under the Communications Act to use privately formed committees to advise on frequency assignment issues, which the Commission had been doing since 1958.[18] Should the Commission believe it preferable to seek legislative reform, it should recommend that Congress amend Section 332(b) to affirm the Commission's authority to use DTV channel coordinators without subjecting them to the Federal Advisory Committee Act requirement.[19]

Despite their similarities, DTV coordination has certain complexities that land mobile coordination lacks (such as tower siting and universal service issues). To establish the coordination process suited to DTV, the Commission should cover the following issues (among others) in the Proposed Notice: (1) the structure of the DTV channel coordinating committee; (2) the selection criteria for the DTV channel coordinators; (3) the rules for DTV channel coordination; and (4) the nature of Commission oversight. Below are some initial proposals, although we will enlarge upon and/or adjust these ideas in future comments.

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[18] See 47 U.S.C. § 154(i), providing that the "Commission may perform any and all acts, make such rules and regulations, and issue such orders . . .as may be necessary in the execution of its functions."

[19] See Broadcasters' Comments, at 59, in which Broadcasters suggested that Section 332(b)(1) be amended, for example, specifically to include "and stations in the DTV service" in the subsection describing the functions of the advisory coordinating committees.

A. Coordination Structure and Mission

The Notice envisions a committee that would "evaluate and provide advice to the Commission with regard to coordination of changes in allotments; the creation of new allotments; and changes in authorized facilities (for both NTSC and DTV stations) that would impact other allotments/assignments." 11 FCC Rcd at 11011. The Commission now must determine how many coordinating committees there should be and, if more than one, to what extent recommendations should pass through a single point of contact to ensure uniform and comprehensive analyses. In addition, the Commission must determine what issues are appropriate for the coordinators to consider.

Coordinating DTV channel assignment and facility changes will be a national project. As with private land mobile coordination, but far more so, it will be critical that, at any given time, all recommendations to the Commission be based on the same database and reflect consideration of the proposals' nationwide effect. In the past, it has been necessary to have a single point of contact with the Commission to accomplish this level of coordination. The Commission might take the same approach with the DTV coordination committees, establishing regional committees under the umbrella of a single organization that manages the nationwide database. Alternatively, it may be possible to make use of technology to ensure that all regional committees work from the same database and are able to account for pending recommendations from other regions. On balance, we believe that the first approach is preferable because it reduces the chance that recommendations will conflict and will ensure consistency of analyses and procedures (*e.g.*, where proposals have implications outside their home regions).

The coordinating committees, whether acting independently or under a single umbrella, should have a number of responsibilities to be discharged in a fair and non-discriminatory manner. First, they should serve as a resource for television stations wanting to determine whether an NTSC or DTV facility change or DTV channel change is feasible given the resulting interference and coverage effects. Station requests for interference and coverage information should be submitted on standard forms (preferably electronically to all committees) and should be justified. Second, the committees should process requests for NTSC or DTV facility changes and DTV channel changes, also submitted on standard forms and justified. The goal of this process should be to accommodate reasonable requests without creating unacceptable disruption to neighboring NTSC or DTV stations (the suggested methodology is discussed below). Thus, committee personnel should work with the relevant stations to arrive at a workable proposal. Stations should be prepared to file technical studies to assist the coordinator in assessing the proposals. In addition, prior to submitting their assessment to the Commission, the committees should be charged with notifying all affected stations within the same or neighboring markets of their preliminary assessment and provide an opportunity for stations to comment, object, or file their own proposals that could be precluded by the proposal under consideration. Third, the committees should submit assessments of the proposals to the Commission, including recommendations, where appropriate, that the Commission grant or deny the proposed changes. Such assessments should be limited to the technical viability of the proposal,

without regard to whether the proposal is feasible given the local, state, or federal regulations that may apply.[20]

B. Selection of Coordinators

The Commission must establish selection criteria for the coordinators and should seek applications in the Proposed Notice. As in the private land mobile context, DTV coordinators should be representative of the users they will serve but should function independently of any particular broadcast organization. In soliciting applicants for the coordination responsibilities, the Commission should request information on:

- Proposed coordination plans, including an estimate of fees and processing times;
- The entity's qualifications, including how it is representative, its knowledge of television station engineering, and its knowledge of DTV propagation characteristics; and
- The hardware and software that the entity intends to use to handle DTV channel mapping on a nationwide basis.

The Commission should then select those coordinators that are best qualified to fairly and efficiently process and assess facility and channel change requests.

C. Coordination Rules

The Commission must establish rules by which the coordination committees process station requests. These rules should address: fees, processing time and order, and processing methodology, among other aspects of the coordination process.

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[20] Because there may be many pending proposals at the time the coordinator submits its assessment, the assessment will need to take into account as many pending proposals as possible and make clear that it assumes such proposals will be granted or, alternatively, that its assessment will not be valid if certain of the pending proposals are granted.

Fees. The Commission should avoid setting fee schedules. Rather, coordinators should be permitted to charge reasonable and cost-based fees for providing information to stations and processing their requests for facility and channel changes. The cost basis should include both time and disbursements.

Processing time and order. It is likely that requests for information and facility and channel changes will vary greatly in complexity. For example, requests submitted to the regional coordinators may range from a request for an evaluation of a single DTV channel to requests for information on more than 10 possible alternative channels. Naturally, the time needed to provide information will vary with the nature of the request.[21/] Similarly, the time it will take to assess facility and channel change requests will depend on how many other stations are affected and how many other pending requests must be factored into the assessment. We urge the Commission to stipulate that station requests should be processed in a timely manner, but to refrain from setting time limits until it has more data on the functioning coordination process.

With respect to processing orders, the general rule should be that requests are to be processed in the order received, and coordinators should be required to maintain logs. Exceptions should be made for requests that reflect coordination among stations -- for example, where the stations in a given market (and in affected markets) have proposed a market-wide alternative DTV channel plan. Such proposals should be given a "time-credit" of a certain duration so that they jump forward in the line of consideration.

[21/] To minimize the number of frivolous requests, we urge the Commission, as noted above, to require stations to justify their requests for alternative channel information.

Methodology. The Commission must determine whether all DTV channel coordinators should use the same methodology and database and whether they should be bound to use the FCC database. Given the complexity of managing the NTSC and DTV services within the broadcast spectrum and the nationwide implications of DTV channel changes, it is critical that the coordinators use the same methodology to determine which DTV channel assignments and NTSC and DTV facility changes are feasible. Furthermore, the methodology should be governed by the principles and planning factors set forth in Broadcasters' Comments to the Notice, as modified by the Commission. Ideally, the coordinators should rely on the FCC NTSC database in assessing facility and channel changes. The Broadcasters Caucus regional coordinating process and Broadcasters' Comments to the Notice revealed the need for a significant number of corrections or possible corrections to the FCC NTSC database. Although it might be quicker for the selected coordinators to incorporate the changes into their own databases, it is advisable for the Commission to verify the changes, retain control over the NTSC database, and issue a revised database as soon as possible for the use of the coordinators.

Commission Oversight. As with the private land mobile coordinating committees, the Commission should exercise oversight over the DTV coordination committees. It should issue periodic user-surveys to identify any abuses in the coordination process and be prepared to investigate unreasonable delays, alleged over-charges, and other complaints. Coordinators found to be unsatisfactory should be replaced. Much of this oversight will take place on a case-by-case basis, and an effective and flexible "common law" should result. As the Commission receives and reacts to the committees' analyses, the committees will adapt to the Commission's needs.

IV. DTV COORDINATING COMMITTEES WILL IMPROVE SPECTRUM AND ADMINISTRATIVE EFFICIENCIES

Reliance on frequency coordinators in the land mobile and broadcast auxiliary services has made spectrum use in those services vastly more efficient and has saved the Commission considerable time and resources in evaluating proposed assignments. Similarly, the use of DTV coordinating committees would ease the Commission's burden and assist in the task of wise spectrum management. In addition, by delegating first-order evaluations of channel assignment proposals to non-governmental entities, the Commission would contribute to the "reinvention of government" and the associated regulatory reforms the Commission has already undertaken. Indeed, in a recent statement before Congress, Chairman Hundt emphasized that a continuing goal of the Commission is to improve its service by "eliminating redundancy, reducing waste, privatizing where warranted, consolidating and automating for efficiency, and expanding the use of alterative rulemaking mechanisms."[22]

* * *

This petition provides a starting point, although there are other issues and details that the Proposed Notice should cover. We urge the Commission to release the Proposed Notice in the next month so that the many stations requesting DTV channel and facility changes can begin to explore alternatives without delaying the issuance of a DTV

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[22] Statement of Reed E. Hundt on Implementation of the Telecommunications Act of 1996 Before the Subcommittee on Telecommunications and Finance Committee of Commerce of the U.S. House of Representatives, 1996 FCC LEXIS 3808, at *16 (July 18, 1996); see also In the Matter of Improving Commission Processes, 11 FCC Rcd 14006 (Feb. 14, 1996) (seeking comment on methods to improve speed and quality of service and to use resources more efficiently, including privatization, replacement of advance Commission review and approval by self-regulating organizations overseen by the Commission).

allotment/assignment table that is the critical next step in the roll-out of this new technology to the public.

Respectfully submitted,

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