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

In the Matter of	)	
	)	
Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules	)	WT Docket No. 99-168
	)	
Carriage of the Transmissions of Digital Television Broadcast Stations	)	CS Docket No. 98-120
	)	
Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television	)	MM Docket No. 00-~~83~~ 39

To: The Commission

COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

August 16, 2000

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SUMMARY

Crucial decisions involving this country's communications development are today caught in a regulatory gridlock at the Federal Communications Commission. The five-year old transition to digital television broadcasting is in total disarray – we have a transmission standard that may not work; we have a build-out schedule that ignores the lack of availability of critical transmission equipment and the absence of government-authorized permits to build the new DTV stations; there are literally no digital receivers being purchased in this country; and, there are no set compatibility standards as the cable and TV set manufacturing industries continue to bicker. A two-year old proceeding at the FCC to articulate broadcasters DTV must carry rights remains just that, a two-year old proceeding with no rules yet adopted. Television broadcasters are frantic and frustrated and the American public is starting to point fingers.

The future wireless internet providers in the United States are faring no better at the FCC. These companies desperately need more spectrum and are looking anxiously at the 700 MHz spectrum which Congress has directed the FCC to auction for such use. Now delayed for a third time, these wireless internet providers cannot be sure of when that auction will be held or how encumbered that spectrum will be. The FCC has yet to issue rules that would open the door to the full potential of this spectrum. To put the value of this spectrum in perspective, the current German auction for 20 MHz (population of 80 million) is at $40 billion, representing a per person-per MHz value of $25. This means this country's auction of 30 MHz of spectrum with a population of 260 million comes to an unimaginable number.

In these Comments, PCC sets forth a blueprint for FCC action that will hasten the transition to digital broadcasting, unlock the potential of the wireless internet, and add billions to the U.S. Treasury. PCC spells out with clarity the need for FCC action and when, for FCC attention rather than inattention and for an FCC to act now and not wait and worry about the political implications of its actions.

Those who are interested in the digital broadcasting world, in the new wireless internet and in continuing the communications/information economic revolution in this country would do well to read PCC's Comments and urge the FCC to take the action requested.

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COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("PCC") submits herewith its comments in response to the Commission's *Further Notice of Proposed Rule Making*[1] regarding what steps it should take to facilitate clearing 30 MHz of the 700 MHz band that will be auctioned to wireless providers.[2] Directly and through wholly-owned subsidiaries, PCC owns the largest group of full power television stations in our nation – and the largest

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[1] Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-83, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00-224 (rel. June 30, 2000) ("*Further Notice*").

[2] Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, FCC 00-90 (rel. Mar. 9, 2000) ("*700 MHz Second Report and Order*").

number of stations in the channels 59-69 band. As a broadcaster, PCC believes there are important public interest benefits that could be obtained in clearing the band of allotted television broadcast stations prior to the end of the DTV transition period, and, consistent with the public interest, accordingly requests that the FCC take immediate specific steps to "jump-start" the DTV transition and establish rules for the spectrum auction, thus facilitating band clearing opportunities. If the FCC fails to act quickly or shows signs of leaving the issues to a new group of Commissioners, PCC would be compelled to lobby Congress to take the actions necessary to pressure the FCC or, better yet, legislate the issue to get the DTV transition going again, preventing another delay in the spectrum auction and set the stage to clear the 700 MHz spectrum.[3]

Now is not the time for the FCC to timidly shirk its statutory obligations. PCC is fully aware that the fast-approaching election might produce anxiety and paralysis within the Commission, which will undoubtedly be significantly different in composition by the March, 2001 auction date. But such concern must be put aside for the national good. This can no longer be a do-nothing Commission torn by ideological differences. The FCC must act quickly or this nation will lose its communications preeminence.

I. INTRODUCTION.

A. PCC is a Broadcaster.

PCC commenced its television operations in 1994 after many years in radio broadcasting. Its single-majority shareholder has over 45 years experience operating

[3] Although the FCC only is auctioning the channels 60-69 band, channel 59 must be cleared as well to avoid interference that may be caused by adjacent-band operation.

broadcast licenses, and PCC's strategic partner, NBC, has been in broadcasting since the earliest days of television.

PCC has built the largest broadcasting television station group in the United States in a short six year span by laboring in the upper reaches of the UHF spectrum. Upon completion of pending acquisitions, construction projects, other transactions, and divestitures, PCC will own 67 full power television stations, which, in combination with over 50 non-owned affiliates, makes up the distribution of the **PAXTV** network. **PAXTV** now reaches approximately 81% of the television households in the country and continues to expand. The vast majority of these stations are UHF stations that PCC has constructed from FCC-issued permits, rebuilt, and/or otherwise infused with capital and improved their technical facilities.

PCC's ownership of these stations enabled the 1998 launch of the seventh network, **PAXTV**, providing viewers a safe haven of over-the-air television programming for the American family and leading to increased video programming competition. **PAXTV** provides a unique selection of family-friendly programming unduplicated by the other free over-the-air broadcast television and/or cable networks. The majority of **PAXTV** programming consists of one-hour drama, situation comedy, talk and information programs and movies. The **PAXTV** philosophy is to provide family friendly programming free of explicit sex, gratuitous violence, and foul language, and is staying true to its mission. **PAXTV** is the first network to package programs with a family focus. **PAXTV** has answered Commissioner Tristani's call for broadcasters to act in the interests of our children:

> Four major health organizations reminded us again that television violence has a harmful and noxious impact on our children. Entertainment violence is polluting the minds of our children. We don't need 50 years of studies – like we had on smoking – to know that entertainment violence has a toxic effect.
>
> Today I call on the entertainment industry, and particularly the broadcasting industry, to stop violating the minds of our children. I will also be asking the FCC Chairman to hold a Commission hearing on television violence and the public interest obligations of broadcasters.[4]

PAXTV welcomes the Commissioner's call to DTV arms and notes that **PAXTV** will create and launch multiple channels of free over-the-air family friendly programming in the digital world – if there is full digital must carry. Two years before our two major political national parties included "family-friendly" in their campaign platforms, **PAXTV** was providing the only free, family friendly programming service on an over-the-air network basis. **PAXTV** acknowledges its public interest obligations and urges the Commission to recognize its obligations: finish the ingredients for the DTV transition process, correct the mistakes that have been made, and stop delaying the DTV must carry ruling and spectrum auction.

Since the early 1990's, the UHF analog spectrum, coupled with the Congressional must carry law, has taken America from three broadcast television networks to nine, and **PAXTV** is proud to be part of this phenomena.

PAXTV is adding new and appealing programs as it starts its third year. Through its strategic relationship with the National Broadcasting Company ("NBC"), **PAXTV** is broadcasting weekly extended prime time coverage of the "2000 U.S. Olympic Team

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[4] Statement of FCC Commissioner Gloria Tristani on The Impact of Entertainment Violence on Children (July 26, 2000).

Trials" leading up to this year's Olympic Games in Sydney this September. This includes original coverage of archery, canoeing, cycling, equestrian, fencing, marathon, rowing, sailing, triathlon, volleyball, water polo, weightlifting and wrestling.

The foundation of the **PAXTV** Monday through Friday primetime schedule includes original series "Twice In A Lifetime," "It's a Miracle," "Hope Island," and "Mysterious Ways." New 8:00 p.m. series slated to premiere during the network's third season include "Masters of Illusion," "Encounters With the Unexplained," and "The Rumfords." This fall, the network will introduce the "PAX Big Event" on Sunday nights, showcasing original made-for-television movies and mini-series, specials and popular theatrical films including "Doc," a dramatic original **PAXTV** movie starring country superstar Billy Ray Cyrus; "Once Upon A Christmas," a lighthearted holiday movie starring Kathy Ireland and John Dye; three full-length original "Christy" movies; the "Mrs. America" and "Mrs. World" pageants and much more. Additionally, the lineup features off-network runs of the hit series "Touched By An Angel," "Diagnosis Murder," "Promised Land" and "Our House."

PAXTV, in conjunction with NBC owned and affiliated stations, has started to roll out new local news casts in many of its markets. In twelve markets including New York, Los Angeles, Chicago, Dallas, Washington, D.C., Providence, Philadelphia, Miami, Raleigh-Durham, Hartford, Birmingham and Milwaukee, the PCC owned station is broadcasting a 7:00 p.m. and 11:30 p.m. daily 30-minute news program (6:30 p.m. and 11:30 p.m. in Milwaukee), and further roll-outs of such local news programs is expected this year in many additional PCC stations.

In 1998 when Bud Paxson launched **PAXTV**, he was concerned that after a career of 45 years in broadcasting, something was missing in television. The "Family Viewing Hour" had disappeared, the voluntary NAB TV Code was no longer in effect, and existing broadcast networks were offering "adult" content in prime time often as early as 8:00 p.m., (*i.e.*, in the family viewing hour). He knew the majority of Americans wanted something better for their families, so he created **PAXTV** as a safe haven for family viewing and as a way to offer uplifting messages to the television audience in an entertaining way.

The need for a **PAXTV** is as strong today as it was in 1998. In a May 25, 2000 letter to Chairman Kennard, four leading Senators wrote:

> As you well know, frustration and anger about falling standards have been voiced for some time by millions of American parents, who are fed up with the rising tide of glorified violence and increasingly explicit sexual content flooding into their homes through their televisions.
>
> * * *
>
> Much of this content is clearly unsuitable for children, millions of whom are watching during the hours these programs are regularly broadcast. In fact, a case could be made that portions of some programs are so offensive that they meet the Commission's legal standard for indecency – "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities."
>
> * * *
>
> The denials and excuses we routinely hear today from the industry raise serious questions about the commitment of many broadcasters to serving the public interest, as they are obligated to do by law. We must remember that broadcasters are trustees of a public resource worth billions of dollars, which they get access to for free, in return for a pledge to act as responsible stewards of the airwaves. The license they receive is a legally-binding contract, an especially important one given television's immense influence on our children and our culture. And much to our dismay, the evidence presented in this letter strongly suggests that many

> licensees, along with their network parents, are breaching this public trust, and harming rather than serving the public interest.[5]

PCC agrees with these Senators and notes with pride its continuing efforts to provide television programming free of such content and its intention of creating and launching multiple channels of family friendly programming in the digital world.

PCC enjoys being a broadcaster and likes the business. PCC worked hard to build the seventh network, adding value to stations in communities across the country, building new facilities, resurrecting bankrupt stations, and modernizing older UHF stations. PCC is committed to broadcasting and takes seriously the many important roles of being a responsible broadcaster. **PCC is excited about the future of broadcasting – and that future is DTV.** As the nation's largest owner of broadcast television licenses, perhaps no other station owner faces as large a task as PCC: placing over sixty new DTV stations into operation in less than two years. This investment in digital is enormous but absolutely critical if free, over-the-air television broadcasting is to remain competitive as an entertainment platform. Broadcasters' future is in programming – not datacasting – because that is what we do.

Whether analog or digital, **PAXTV**'s success depends to a large extent on cable carriage for its coverage disadvantaged UHF affiliates. Without must carry, many UHF television stations would not have survived because of denied access to the cable systems serving their markets. PCC's UHF stations operate under a technological handicap that is reflected in the FCC's UHF discount employed in measuring audiences

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[5] Letter from Senators John McCain, Joe Lieberman, Robert Byrd and Sam Brownback to William Kennard (May 25, 2000) (internal citations omitted).

for national ownership cap purposes. As recently as this past June, the FCC reaffirmed the UHF handicap and acknowledged the continuing validity of the UHF discount designed to level the television playing field.[6] The need for the UHF discount remains as strong today as it was in 1985. Mandatory cable carriage of these stations has been critical to their improved economic status. Without must carry, there would have been no emergence of the Fox, **PAXTV**, UPN, WB, Univision, or Telemundo networks, with their affiliates in localities throughout the country. The importance of must carry for these stations and their network will only be heightened by the transition to DTV.

B. PCC is Seriously Concerned about the State of the DTV Transition.

As a committed and responsible broadcaster, PCC is very concerned about the present state of the DTV transition and its immediate prospects. The FCC's goals for a rapid DTV implementation and a rapid spectrum recovery[7] are in jeopardy. The Congressional Budget Office frankly has concluded that "[i]t now appears likely that the [DTV] transition will extend beyond [the scheduled] 2006 in most markets, with its ultimate end date uncertain."[8] Nothing reported in last month's Congressional hearing contradicts this view.[9] Despite continually falling prices, after more than two years into

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[6] 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, *Biennial Review Report*, FCC 00-191, at ¶35 (rel. June 20, 2000).

[7] Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Fifth Report and Order*, 12 FCC Rcd 12809, 12812 (1997).

[8] *Completing the Transition to Digital Television*, Congressional Budget Office, Congress of the United States (Sept. 1999).

[9] *Hill Questions Slow DTV Rollout as Modulation is Debated*, COMMUNICATIONS DAILY, July 26, 2000.

the DTV transition only 40,000 digital receivers have been purchased – an insignificant number compared to the 260 million television receivers that viewers nationwide must replace.[10] Even more disturbing, sales of digital receivers are falling sharply.[11]

The FCC appears overwhelmed. The agency is burdened with DTV processing delays, having granted only 525[12] of the over 1,600 DTV construction permits it must issue for commercial and noncommercial stations. Of the 62 digital television stations that PCC must construct before May 1, 2002, the FCC has granted construction permits for only 3 (*i.e.*, less than 5%). The FCC has been unable to put to rest questions about the adequacy of the DTV transmission standard. Almost a year after Sinclair Broadcast Group formally sought to allow stations to employ either the adopted 8-VSB transmission standard or the alternative COFDM,[13] and six months since the FCC denied the request,[14] there is no consensus in the television industry on how to dependably deliver digital TV content to the viewer.[15] The FCC has had no success in getting television set manufacturers, content providers, and cable operators to agree on

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[10] Joel Brinkley, *Digital TV Era Still Remains Out of Reach*, N.Y. TIMES, Aug. 7, 2000, at C1.

[11] *Id.*

[12] FCC Status Report (Aug. 2, 2000) (visited August 12, 2000) <http://www.fcc.gov/mmb/vsd/files/dtvsum.html>.

[13] Petition for Expedited Rulemaking, Sinclair Broadcast Group (dated Oct. 8, 1999).

[14] Letter from Magalie Roman Salas, Secretary, FCC, to Mr. Martin R. Leader, counsel, Sinclair Broadcast Group (Feb. 3, 2000) (FCC 00-35).

[15] Joel Brinkley, *Digital TV Era Still Remains Out of Reach*, N.Y. TIMES, Aug. 7, 2000, at C1.

standards for digital content delivery from digital television stations on cable systems. A series of threats by the FCC has been ignored, resulting in little more than an unpromising Notice of Proposed Rulemaking[16] and disputed agreements.[17] Resolution of copy-protection questions in the near future seems all but hopeless.[18] **LOOK**, after two full years, the FCC has yet to produce digital must carry rules.[19]

These results were unfortunately predictable, flowing from the FCC's confusing claim to prefer market solutions. Chairman Kennard says "some [DTV stations will] fail to make it.... We'll see winners and losers."[20] Commission Ness asks, "Will [digital broadcasting] be a boom or a bust? That only the marketplace can answer."[21] Undoubtedly, PCC favors market solutions, but the market is not authorized to adopt DTV transmission standards, and stations cannot construct DTV facilities without FCC authority to do so. Only the FCC can establish digital must carry and require cable and television set compatibility. There are certain transition and implementation measures that only the federal government can take. The FCC, however, has no answers to the

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[16] Compatibility Between Cable Systems And Consumer Electronics Equipment, PP Docket No. 00-67, *Notice of Proposed Rulemaking*, FCC 00-137 (rel. Apr. 14, 2000).

[17] Doug Halonen, *Digital Television Derailed*, ELECTRONIC MEDIA (July 17, 2000).

[18] *See*, Joel Brinkley, *Digital TV Era Still Remains Out of Reach*, N.Y. TIMES, Aug. 7, 2000, at C1.

[19] Proceeding initiated in Carriage of the Transmissions of Digital Television Broadcast Stations, CS Docket No. 98-120, *Notice of Proposed Rulemaking*, 13 FCC Rcd 1092 (1998).

[20] Remarks of William E. Kennard to the International Radio and Television Society, New York, New York (Sept. 15, 1998).

[21] Remarks of Susan Ness to the California Broadcasters Association, Monterey, California (July 27, 1998).

disturbing DTV transition issues, and the results, inadvertent or not, are delaying the digital TV transition. None other than Commissioner Powell calls the DTV transition "a potential train wreck."[22]

In September 1998, Chairman Kennard outlined four actions he felt the FCC had to take to complete the DTV transition: (i) establish a build-out schedule; (ii) complete international agreements; (iii) establish set interoperability standards; and (iv) resolve the DTV must carry proceeding.[23] Two years later, the FCC has still not completed two of its four tasks! FCC action is long overdue on set interoperability and DTV must carry, and it may be time for Congress to establish a schedule for FCC action. As Broadcasting and Cable Magazine noted last month, "lack of FCC resolve in bringing the competing industries together has cost the public three years of digital progress.... For free, over-the-air digital broadcasters there aren't many more to lose."[24] PCC would only add Amen!

And what are the stakes? Commissioner Powell says there is a limited window of success: "I'm not sure we'll get two or three shots at [implementing DTV]. I think it

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[22] Bill McConnell, *Powell Raises Red Flag Over DTV Switch*, BROADCASTING & CABLE, Sept. 21, 1998, at 22.

[23] Remarks of William E. Kennard to the International Radio and Television Society, New York, New York (Sept. 15, 1998).

[24] *First Things First*, BROADCASTING & CABLE, July 31, 2000, at 78.

will be extraordinarily difficult to achieve the ubiquitous customer acceptance that is necessary for success.... A change this dramatic needs to be done right."[25]

C. Cases in Point:

The FCC's mismanagement thus far culminates in its failure to set the stage for clearing channels 60-69. The FCC has made no effort to use its rulemaking authority to issue rules supporting efforts to clear the band. In April 1997, the FCC issued the DTV Table of Allotments with a number of stations assigned DTV channels in the 60-69 band.[26] Four months later, Congress directed the FCC to reallocate the spectrum and commence competitive bidding for licenses in the commercial portions after January 1, 2001.[27] Notified of the impending auction, the FCC had two opportunities on reconsideration to clear out the DTV channels that it imprudently allocated in the 59-69 band, but only offered that "[h]ad other channels been available, they would have been allotted to these broadcasters."[28] Action on the FCC's part would have facilitated band

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[25] Bill McConnell, *Powell Raises Red Flag Over DTV Switch*, BROADCASTING & CABLE, Sept. 21, 1998, at 22.

[26] Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Sixth Report and Order*, 12 FCC Rcd 14588 (1997) ("*DTV Sixth Report and Order*").

[27] 47 U.S.C. § 337(b)(2)(a). In November 1999, Congress accelerated the auction so that proceeds would be deposited in the U.S. Treasury by September 30, 2000. *See* Pub. Law 106-113 Stat. 1501, Appendix E, § 213.

[28] Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, at ¶93 (1998); Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348 (1998).

clearing and accelerated the DTV transition by reducing from 144 to 103 the number of allocations to be cleared out of the 700 MHz spectrum for the next generation of wireless users.

Even efforts to assist the FCC have been met with silence and inaction. On its own initiative, PCC asked consulting engineers to conduct a study of whether any of the five DTV allocations in the channels 60-69 band in the Los Angeles DMA could be reallocated to other DTV channels. PCC informed the FCC that it had identified seven channels that held promise for DTV use.[29] The use of some or all of these channels would significantly free up the 700 MHz band and have a positive impact on the spectrum auction. The FCC has yet to respond.

Another example of DTV mismanagement is the FCC's neglect of broadcasters' use of translators to reach viewers in a station's market, especially in rural areas. The FCC has offered little accommodation in its policies for the licensing of digital translators to broadcasters, crippling their ability to obtain actual replication of their existing free programming service in the digital world. This will adversely impact the ability o flow power and translator stations that provide irreplaceable over-the-air service to the viewing public in America's most rural areas.

D. The 700 MHz Auction Presents an Opportunity to Help Right the DTV Ship.

The 700 MHz auction offers the FCC a special opportunity to jump-start the DTV transition. Certain elements and interests have aligned, handing the FCC – **and,**

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[29] Letter from Lowell W. Paxson to Commissioner Susan Ness (June 6, 2000).

except for Congress, it is only the FCC that has the power to do this – the chance to achieve a number of public interest benefits in one stroke.

The reallocation of the channels 60-69 band is an essential part of the FCC's digital television process, in which broadcast television stations are transitioning from analog to digital operations. In the *DTV Sixth Report and Order*,[30] the FCC stated that during its repackaging of available television channels into a "core spectrum," all analog and digital television stations in the channels 60-69 band – scheduled for early reallocation – would be fully protected during the DTV transition period. A few months later, in the Balanced Budget Act of 1997, Congress provided additional guidance, specifying that 36 MHz of the channels 60-69 band be reallocated for commercial use and assigned by competitive bidding.[31] Congress further specified that incumbent television stations in the channels 60-69 band would be removed at the end of the DTV transition period,[32] unless general market acceptance of digital television fell short of specified levels.[33]

In 1999, Congress accelerated the timing of the 700 MHz auction.[34] Since then, under pressure from the wireless industry, the FCC has delayed the auction three times

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[30] *See DTV Sixth Report and Order*, 12 FCC Rcd at 14626-27.

[31] 47 U.S.C. § 337(a).

[32] 47 U.S.C. § 337(e).

[33] 47 U.S.C. § 309(j)(14)(B).

[34] Pub. Law 106-113 Stat. 1501, Appendix E, § 213.

– now scheduled for March 6, 2001 – to permit additional time for bidder preparation.[35] As a result, the 700 MHz auction will not be completed within the time Congress directed.[36]

PCC has significant interest in the outcome of this proceeding. PCC owns eighteen analog stations and one digital allotment in the channels 59-69 band[37] – representing nearly one out of every seven affected stations. PCC also has participated in filings to the Commission, acknowledging the public benefits of an accelerated band clearing that would allow the timely provision of innovative wireless internet services.[38] Broadcasters have no incentive to clear the band, however, unless assured that viewers can continue to receive a station's signal. The only reasonable means to accomplish this is to establish full digital must carry rights, which are constitutionally due. The confluence of these issues and interests presents the FCC with the leverage to achieve both accelerated band clearing and accelerated DTV implementation. It is difficult to imagine the FCC gaining a more stunning regulatory accomplishment. The FCC's

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[35] Federal Communications Commission, *Public Notice*, Report No. AUC-00-31-I (July 31, 2000).

[36] The auction proceeds were to have been deposited in the U.S. Treasury by September 30, 2000. Pub. Law 106-113 Stat. 1501, Appendix E, § 213.

[37] WPPX(TV), Wilmington, DE; KKPX(TV), San Jose, CA: WBPX(TV), Boston, MA; WPXB(TV), Merrimack, NH; KPXD(TV), Arlington, TX; WPXW(TV), Manassas, VA; WWPX(TV), Martinsburg, WV; WXPX(TV), Bradenton, FL; KPXC-TV, Denver, CO; WIPX(TV), Bloomington, IN; WFPX(TV), Fayetteville, NC; WPXP(TV), Lake Worth, FL; KOPX(TV), Oklahoma City, OK; WPXQ(TV), Block Island, RI; WQPX(TV), Scranton, PA; KPXF(TV), Porterville, CA; KPXO(TV), Kaneohe, HI; and WVPX-DT, Akron, OH. An acquisition of station WAOM(TV), Morehead, KY is pending.

[38] PCC *ex parte* filing of May 3, 2000; PCC *ex parte* filing of May 26, 2000.

opportunity, however, may be fast fleeting, and it is easy to imagine the FCC ignoring the opportunity. With the possibility of major changes in the makeup of the Commission, the likelihood of a do-nothing, leave-it-to-the-next-person attitude poses a serious threat to the DTV transition and the future of the 700 MHz auction. In all probability, more auction delays are forthcoming.

II. IMPORTANT PUBLIC INTEREST BENEFITS WILL RESULT FROM A TIMELY AUCTION.

A timely 700 MHz auction presents a unique opportunity for the FCC to realize important public interest benefits. By clearing the band early, new and powerful wireless services reach the market sooner. By establishing full digital must carry rights, digital transmission standards, receiver standards, and cable compatibility issues, incumbent broadcasters have an incentive to clear the band. Viewers of displaced analog stations could continue to receive television service, and, with so many stations solely relying on digital service, the FCC will make a major impact on faltering DTV transition.

The six-month delay of the 700 MHz auction that the wireless industry supported will allow the FCC to develop and sanction methods to facilitate easier band clearing[39] – if the FCC acts without delay. Further delays, however, especially in light of statutory directives, are neither wise nor warranted. Prospective bidders in the 700 MHz auction have known since January that the FCC would consider voluntary band clearing

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[39] Federal Communications Commission, *Public Notice*, Report No. AUC-00-31-I (July 31, 2000).

agreements.[40] The important public benefits which give the FCC authority to sanction early band clearing are threatened if the auction is delayed further. Broadcasters are prepared to move forward, but not indefinitely. Accordingly, delaying the 700 MHz auction beyond March 6, 2001 would not be in the public interest, because it would worsen the DTV malaise, threaten the development of the wireless internet in this country, cripple the information revolution, and deny the U.S. Treasury of the auction proceeds.

It is disingenuous to permit any further delays in the 700 MHz auction based on the need to clear the channel 59-69 band, or on the alleged unwillingness of incumbent television stations to negotiate. Six months ago, the FCC Chairman recognized how intertwined the present users and future users of this spectrum were:

> I urge incumbent broadcasters to negotiate voluntarily with incoming licensees, so that this valuable spectrum can be used quickly to its maximum capacity. While negotiations and voluntary agreements to accelerate moving to new assignments can be accomplished under existing case-by-case waivers, I would like to see an easier, more market-driven process.[41]

By letter dated March 31, 2000, PCC urged the Commissioners to move on digital must carry because of the implications for the 700 MHz auction,[42] and it repeated

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[40] Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *First Report and Order*, FCC 00-5, 18 CR 1435, at ¶145 (rel. Jan. 7, 2000) (*"700 MHz First Report and Order"*).

[41] Remarks of William E. Kennard To the Cellular Telecommunications Industry Association, New Orleans, Louisiana (Feb. 28, 2000).

[42] Letter from Lowell W. Paxson to the FCC Commissioners (Mar. 31, 2000).

this admonition in a July 20, 2000 letter to the FCC.[43] In letters dated May 25, 2000 and July 17, 2000 PCC wrote to the potential 700 MHz bidders and asked them to contact PCC if they were interested in discussing the issues surrounding spectrum clearing. PCC opened the door for such discussions but not one bidder has yet to step through and meet with PCC. To PCC's knowledge, none of the bidders has approached any of the other incumbent broadcasters.

If the 700 MHz bidders will not talk to broadcasters about band clearing, then surely they cannot blame broadcasters for the delay in the auction or a delay in developing a wireless internet in this country. It may be that telecommunications companies wish to delay the 700 MHz wireless auction to delay cannibalizing their own wireline businesses. Broadcasters await a dialogue with the bidders but will be hard pressed to consider clearing the channel 59-69 band until the FCC finishes its long overdue work. PCC and other television incumbents simply cannot cripple their businesses by vacating analog spectrum for a digital world now riddled with FCC-generated problems.

Accelerated DTV Transition. PCC believes that broadcasters will not stand as unreasonable impediments to the timely implementation of innovative wireless technologies such as "2.5" or "3G" services,[44] and it stands prepared to enter into voluntary, privately negotiated agreements to permit the early introduction of such

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[43] Letter from Lowell W. Paxson to William E. Kennard, Chairman, Federal Communications Commission (July 20, 2000).

[44] *Further Notice* at ¶61.

valuable services. However, just as the Commission desires to promote innovation for the wireless industry through band clearing, the Commission must concurrently accelerate the DTV transition by requiring mandatory cable carriage of broadcasters' digital multicast signals. Indeed, the FCC cites the notion of an accelerated DTV transition as a basis for its authority to facilitate band clearing.[45]

The FCC can accelerate the DTV transition by establishing clearing policies that incentivize displaced analog stations to commence DTV operations on their digital allotments within 18 months of receiving their final DTV construction permit. Besides clearing the band by a date certain, this will result in dozens of broadcast stations transmitting solely in digital, which will drive and facilitate the DTV transition in numerous ways. Prior to making an investment in new DTV sets, consumers would obtain needed certainty that they can and will receive digital signals. Consumers also obtain the certainty that digital programming has reached a critical mass. An accelerated DTV transition means an accelerated market penetration, which, in turn, means an accelerated recovery of valuable analog spectrum, which the government intends to auction off for additional revenues. Full DTV must carry significantly improves the chances for DTV's success.

Further auction delays diminish the viability of this opportunity by introducing uncertainty into an already constrained DTV construction timeline. For example, in the Boston market, PCC timely filed its DTV construction permit application for WPXB(TV),

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[45] *Id.* at ¶51.

Merrimack, New Hampshire (analog channel 60),[46] proposing operation on the existing tower that currently accommodates its analog operations. The station since has discovered that the existing tower physically cannot support both the analog and digital antennas, and thus PCC is required to find a new site. After locating a suitable piece of property and initiating the FAA and local zoning process, it appears that there is local opposition to PCC's efforts to construct the new digital tower. For PCC, this process is being repeated many times around the country and probably hundreds of times for all broadcasters. If PCC (and other broadcasters) were assured, however, of full digital must carry and, thus, a clear road to clearing the analog spectrum, it would not waste valuable resources seeking to build another tower.[47] PCC simply would replace its analog antenna and equipment with new digital equipment on the existing tower – and save hundreds of thousands of dollars in the process. PCC has been informed such a switch-over would only take the station off the air for 72 hours, but the cost savings would be immense. The total cost savings for all similarly situated broadcasters would be in the millions.

It is one thing for a broadcaster to construct its digital station before May 1, 2002, but it is quite another for the station to complete all arrangements to terminate analog operation and ensure that its DTV signal can be optimally received (*e.g.*, gaining actual

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[46] FCC File NO. BPCDT-19990930AAX.

[47] PCC expects that tower construction capacity also will become an issue very soon, as inquiries into materials availability are resulting in longer and longer delivery times.