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Ms. Magalie R. Salas
Office of the Secretary
Federal Communications Commission
445 12th Street SW, TW-A325
Washington D.C. 20554

March 12, 2000

Re: CS Docket No. 98-120
MM Docket No. 99-360
WT Docket No. 99-168

Dear Ms Salas:

Enclosed for filing is a copy of a letter plus attachments sent to Rep. Billy Tauzin, Rep. Fred Upton, and various members of the House Telecommunications and Internet Subcommittee. Also enclosed are four additional copies.

For your information, similar letters were sent to Senator John McCain and various members of the Senate Communications Subcommittee for a March 1st hearing on digital television.

Sincerely,

Alexandra Kol

Alexandra Kol

Enclosures

No. of Copies rec'd 0+4
List A B C D E

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MAR 22 2001

Chairman Billy Tauzin
House Committee on Energy and Commerce
House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

March 12, 2001

Re: Hearing on Digital Television, 3/15/01

Dear Chairman Tauzin:

As a member of the public who has followed the transition to digital television, I am writing to express my concerns about this technology and the direction it is taking.

Although this hearing focuses on the private sector perspective, it is essential that it be done against the backdrop of the public sector perspective. Otherwise, what is the point? Whose interests are being served by a technology the public does not want and never asked for in the first place? The public is, after all, paying for it.

Before discussing such things as digital must carry, equipment interoperability regulation, and government mandates for digital receivers in all new TV sets, it is important to determine if this transition is worth continuing in the first place.

The American people are being asked to discard their TVs and buy costly new sets. This is after forking over $70 billion worth of spectrum for free to broadcasters – spectrum that is now being warehoused indefinitely. They have a right to ask why.

From the looks of things, digital television is a Soviet-style experiment gone awry. It makes little sense for Congress to speed up a transition that is rooted in spectrum mismanagement. Throwing water on damaged roots will produce nothing.

Instead, let's reboot and start again by overhauling our DTV policy.

The HDTV Smokescreen

As many realize by now, HDTV is nothing more than a display peripheral and a foolish reason for handing over so much spectrum in the first place. It is not surprising that broadcasters, after convincing Congress of the extraordinary benefits of HDTV, are now treating it as an albatross while they pursue such things as datacasting, pay-per-view and most of all, splitting their digital signals into multiple standard-resolution channels.

This is not why Congress awarded broadcasters free licenses!

Equally disturbing is the news that some broadcasters are seeking huge payoffs by "selling" our analog spectrum (i.e., vacating early for billions of dollars, exceeding the fair compensation value of their investment) to the highest bidders, namely 3G wireless companies desperate for spectrum.

It seems that bartering spectrum has become the "killer app" of digital television. As the CEO of Paxson Communications put it, "I kept telling everybody the name of the game is spectrum, spectrum, spectrum." [1]

At the same time, broadcasters are exploiting the spectrum shortage they helped create by trying to extract yet more government favors: multiple must carry on cable, guaranteeing an instant audience without having to earn it and a two-way connection for e-commerce.

It is important to note that while broadcasters are begging the government to force cable into carrying their digital and analog speech, they have been working hard to dismantle their public interest obligations, claiming their First Amendment rights are being violated. "Get the government off our backs!" is the rallying cry of broadcasters when asked to carry even a tiny morsel of the public's speech.

How can you cut the ties of accountability to the public and be a public trustee at the same time?

Why Digital Must Carry Is Not In the Public Interest

There is nothing "free" about free over-the-air television, particularly the absurdly expensive digital television. Just what is there to protect and preserve?

At one time, free over-the-air television was our information lifeline – a vital link to our democracy. Those days are over. The recent election fiasco and broadcasters' well-documented abandonment of civic speech are ample proof of that. In addition, other media entities (who pay for their own bandwidth) are doing the job that broadcasters have failed to do as public trustees.

For example, cable does a better job of connecting citizens to their government than broadcast television with all its government freebies and favors. Not only does cable provide C-SPAN and a slew of other civic and public affairs programs, but it sets aside dedicated channels for government, education and citizen access.

Broadcasters provide no such public services, yet threaten to displace existing services on cable with multiple digital must carry. Congress should be aware of PEG "channel slamming," a common practice of bumping government, education and public channels to higher, less desirable allotments to make way for commercial channels. The Alliance for Community Media has plenty of documented examples of this phenomenon.

Thus, there is good reason to believe that digital must carry will threaten civic, educational and other public speech on cable.

Broadcasters (who have more spectrum capacity than they know what to do with) will have plenty of cable-like opportunities to match or exceed the public services they will be displacing. They have refused. As a result, there is no compelling reason to expand their digital must carry rights. <u>But under no circumstances should the deadline for the DTV transition be extended</u>.

[1] *N. Harris and J.Carroll, "Paxson Could Reap Billions in Talks With Phone Companies," Wall Street Journal Interactive, 8/11/00.*

Scrap the Public Trustee Model

The public trustee model of broadcasting no longer works. It is the deadwood of telecommunications and the main culprit behind the spectrum mess.

Let's scrap it, treat broadcasters like any other industry, and use part of the auction proceeds to establish a public service communications trust fund, as suggested by the Consumers Union and the Consumer Federation of America at the Senate DTV Hearing two weeks ago.

The fund would be used to create a high-quality noncommercial space on the spectrum for such things as universal e-government, national library and education channels, and community and health services. This public service system could work well in tandem with our present public television system, using the nationwide network of public DTV towers as a "last mile" technology into every home and school. Rural and other underserved areas of the country would benefit enormously.

Such a policy would not only free up large amounts of valuable spectrum for wireless innovation, but would truly serve the public (without the constant wrangling and First Amendment battles we must endure today with broadcasters).

Finally, it is essential that Congress and the FCC develop a flexible and more efficient spectrum policy.

Today, the government allocates huge blocks of frequencies to a handful of monoliths for very limited, specific uses. This was the thinking behind the HDTV boondoggle of 1996.and which unfortunately, has not changed much. The fact that Congress is even considering speeding up (instead of overhauling) the DTV transition with yet more layers of regulation shows that our government is stuck in the past, bent on protecting spectrum-hogging incumbents from competition.

Spectrum should be made accessible to as many innovative newcomers as possible, with the flexibility to use it in different ways. So if a cellular phone provider wishes to create a community digital television service, so much the better.

If Congress does not begin to explore more efficient and meaningful ways to use our spectrum, then not only will the United States fall further behind other countries in wireless innovation, but the recent prediction made by FCC Chairman Michael Powell will come true: digital television will never happen and was a mistake to begin with.

Sincerely,

Alexandra Kol

Enclosures

Forbes.com

October 19, 2000

The Biggest Rip-Off In Washington

By James Freeman

NEW YORK - What's the biggest taxpayer rip-off in Washington, D.C.? Tough call. There's almost an embarrassment of riches. Still, despite the presence of many worthy candidates, one stands above the rest.

Tom Brokaw might call it a "fleecing of America," but you probably won't see him covering this one because his company is among those doing the fleecing. For reasons that have everything to do with lobbying muscle and political power and nothing to do with serving the public, America's TV broadcasters were given multibillion-dollar assets for free, assets which belong to you. This rip-off has proceeded quietly over the past decade because TV news has exercised a virtual blackout on this issue.

Now, not content with this enormous gift from politicians, the old media firms are using your property to try to capture large payments from tech firms who might actually put the assets to good use. Forbes.com's Amy Doan reported this week on attempts by **President Clinton** and the Federal Communications Commission (FCC) to find new spectrum (slices of the airwaves) to auction for use in third-generation (3G) wireless services. One of the reasons that spectrum is in such short supply is that TV broadcasters are sitting on valuable swaths of the airwaves, and now they're trying to get paid for them.

This sad tale actually began in the 1980s, when the broadcasting industry convinced Congress that TV station owners needed new chunks of the airwaves to broadcast High-Definition Television (HDTV). The Japanese were supposedly going to beat the pants off us with this allegedly important technology. So Congress agreed to hand over your property, which FCC Chairman **William Kennard** says is now worth $70 billion.

While wireless firms have had to spend billions at auction to acquire their rights to use the airwaves, TV broadcasters received their new spectrum for free. You think that's a powerful display of lobbying prowess? Mid-way through this scandalous process, the broadcasters decided that they didn't necessarily want to use the new channels to broadcast in HDTV after all--and they still received the new spectrum. Now the plan is to broadcast new digital channels and related services.

The law says that the broadcasters get to keep their old channels until 2006 or whenever 85% of consumers have TV sets capable of receiving digital signals--whichever comes later. Then the broadcasters will supposedly return their old channels to the government, so those slices of the airwaves can be auctioned and used for new wireless services.

The return of the airwaves is beginning to look closer to never than to 2006, so some TV station owners have been trying to get compensated by new spectrum bidders for vacating the property on time. The old media, having gotten its spectrum for free, now wants the new media to pay twice--once in the government spectrum auctions and again for the privilege of actually being able to use the spectrum.

Is there any hope of forcing the station owners to vacate their old spectrum sooner, to allow new wireless services to bloom? Is there any chance of making TV stations pay us for the use of our airwaves? The conventional wisdom says no. It's hard to find a more persuasive lobbyist in a congressional office than the guy representing the hometown TV station. This is not a battle that your typical politician wants to fight.

Still, there's reason to think that next year might bring a new opportunity. This is a battle between the old media and the new economy, and the new economy is getting stronger every year in terms of Washington influence. A bunch of tech heavyweights have been mentioned as potential bidders or partners in 3G services, including Microsoft, Cisco and Qualcomm. FCC Chairman Kennard wants the broadcasters to give up the spectrum, and any Republican replacement is likely to feel the same way. Senate Commerce Committee Chairman **John McCain** has been a longtime critic of the HDTV spectrum giveaway, and ranking member Senator **Fritz Hollings** has been critical of the broadcasters at hearings on this topic.

Most people would still bet on the broadcasters to win this scrap, but they're getting weaker while high-tech is getting stronger. So consumers of new wireless services could receive some good news from Washington next year. I think the new economy can win this one.

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Economist.com

Battle of the airwaves

Jul 27th 2000 | NEW YORK
From The Economist print edition

The real threat to America's mobile-phone industry is not European rivals, but a handful of television stations that block its growth. Oddly, politics has given the stations the upper hand

THERE are lots of reasons to question Deutsche Telekom's $46.5-billion bid for VoiceStream, ranging from political objections to its steep valuation of the American firm's customers. But one of the most serious has hardly been mentioned. Deutsche Telekom wants VoiceStream in part to win an American licence for the next generation of wireless services, known as 3G, which will carry broadband data as well as voice. Those licences are due to be auctioned this September; the bid registration deadline is next week. But most of the licences may be virtually worthless for some time—and with them any hope for 3G spreading through America anywhere near as quickly as it takes hold in Europe and Asia.

This is a looming disaster for America's mobile-phone industry. The problem is that it has run out of room to grow: many of the frequencies most appropriate for new voice and data services are already being used by anybody from military-communications to security-alarm firms, a legacy of America's over-generous spectrum allocation in the past. The sweetest band of all, that in the 700 megahertz range, where signals can travel easily through buildings, is occupied by UHF TV channels that are used by about 100 stations scattered around the country.

The Federal Communications Commission (FCC) plans to auction off this band to mobile-phone firms for 3G networks and any other advanced services that winners may dream up. Among the firms expected to register next week as bidders are AT&T, WorldCom, SBC and VoiceStream, along with such giants from the computer and media world as Microsoft, AOL-TimeWarner and maybe even Cisco. Total bidding could reach $50 billion, exceeding even the record $35.5 billion raised by the British government's auction in March.

But unlike previous auctions, the winning bidders will not be free to roll out services as soon as they can build the networks. The FCC is selling the spectrum "encumbered", which is to say already occupied by television stations in most regions. It will be up to the winning bidders somehow to coax the stations to give up their valuable frequencies; but most stations have refused to budge, since this would usually mean going off the air entirely.

If the stations do not give way, the wireless licences will, in effect, be useless. Although the stations are due to give the spectrum back in 2006, when they switch to digital broadcasting on different frequencies, they will not have do so if fewer than 85% of viewers have switched to digital receivers. Since it took 22 years for colour TV to reach

85% of Americans, and 16 years for video recorders, broadcasters could squat on this valuable spectrum for a decade or more.

This is a horrifying prospect for America's mobile-phone operators. After falling far behind Europe and Asia, they have over the past few years raced back, with a huge investment in digital networks. The bet is that wireless networks will be the next Internet; after dominating the technology industry for so long, American firms are determined not to let it now slip from their grasp. But their main obstacle is a chronic shortage ofspectrum across the board, of which the encumbered UHF band is merely the most immediate example.

Radio daze

Compared with most European countries, America's airwaves are impossibly cluttered, thanks to its having been an early adopter of commercial wireless services of all sorts (early radio technology was far "leakier" than today's, and so had to use broader frequency bands to avoid interfering with other services). Its local spectrum-allocation policy has also left a crazy patchwork of available slots in different bands.

Reed Hundt, a former FCC commissioner, estimates that by 2005 the wireless services now in use or planned will require 350-460 megahertz of spectrum, two to three times what is currently available. In contrast, European countries, which have been stingier over doling out spectrum, are in better shape. Britain, for instance, has more than 340 megahertz available, nearly twice the American figure (see chart). "This is a crisis that could cost hundreds of billions of dollars," Mr Hundt told a conference on July 25th. "I'm calling on everyone here to wake up to it."

Although this problem will not be fully felt until a new generation of wireless services beyond those now planned arises, 3G will be the first big battleground. Europe and Asia will start deploying 3G networks over the next two years. As they do so, their American rivals may find they are unable to budge, blocked from using the licences that have cost them so much.

At a recent congressional hearing on the problem, telecoms executives were raising the alarm. "Selling off such severely encumbered spectrum makes no sense. It's simply unusable," complained Dennis Strigl, chief executive of Verizon Wireless, a joint venture between Vodafone and Verizon, which was created by a merger of Bell Atlantic and GTE. Several potential bidders have asked the FCC to delay the auctions until a solution to the dilemma is found. Given the pressure, the FCC may be forced to push the auction back until next year.

How can a few small TV stations cause such trouble? Blame Congress. In 1996 it passed a law designed to encourage the broadcasting industry to move to digital television. In a sweep it gave each station, in UHF and the other bands, a huge new chunk of spectrum for digital services; it also allowed them to keep their old analogue spectrum during the transition from one to the other.

This was controversial for a number of reasons. First, it gave away spectrum that could have been worth billions of dollars had it been auctioned. Worse, it gave it to

broadcasters, not the most innovative of firms. And by not making them give back their old frequencies for a decade or more, it locked up even more valuable spectrum for the most pedestrian of uses, analogue TV broadcasting to a small and shrinking market: viewers who still use basic aerials.

If the UHF-broadcast market is as poor as that, why are the stations so reluctant to give it up? Because the act of sending out a television signal—even if not a single person is receiving it— brings with it a golden reward: a free channel on the local cable network, thanks to the FCC's "must carry" provisions that ensure that cable viewers can see all local stations. The moment a broadcaster stops transmitting a signal, it loses its cable channel. And, since more than 65% of Americans now get their television on cable, that means losing most viewers too.

The broadcasters claim that they too are in a bind. Although the same law requires them to start broadcasting a digital signal, a bungled standard-setting process for receivers means that nobody is watching. There are almost no digital TV receivers in America today, and if the standards mess continues there will not be any for years to come. The FCC has sweetened the pot by offering "must carry" rights on digital cable systems for digital broadcasters, but these represent a small fraction of cable subscribers today. Even if it were to extend that to analogue cable, too, this would still exclude the nearly 100m Americans who do not subscribe to cable.

In similar situations in the past, the FCC has marched in and seized spectrum, moving its occupants to other frequencies with minimal compensation. But those tended to be niche industrial users, such as microwave transmitters. Television, on the other hand, is America's passion and is not so easily pushed around. No wonder Congress voted to spare couch potatoes any interruption of their favourite soaps, rather than bring in unknown new services from what was, in 1996, a relatively sleepy wireless industry.

Now it is discovering the price of that decision. If the spectrum-auction winners have to pay the TV stations to leave early (or to switch channels with stations in other bands that are willing to sell their space), the cost could exceed even that of the auctions themselves. "The broadcasters can hold the wireless industry to ransom," warns one telecoms executive.

Congress could change the law, of course, but that would mean defeating the broadcasting lobby, which would be neither easy nor quick. Either way, the controversy will hold up 3G telephony for years, which will carry its own costs, both in the services available to consumers and in the clout of America's high-tech industry. European technology firms are used to envying their American rivals, even to paying over the odds for them. But as the mobile-phone gap widens, those days may be numbered.

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