

Nov-07-01 12:37pm

From-Energy & Commerce Committee

202-255-2899

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November 6, 2001

DAVID V. MARVENTANO, STAFF DIRECTOR

The Honorable Michael K. Powell
 Chairman
 Federal Communications Commission
 445 12th Street, S.W.
 Washington, D.C. 20554

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NOV 16 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Handwritten notes: OSB/W4PS, DTV, 3627

Dear Chairman Powell:

We were heartened by your October 11th announcement of the creation of an FCC Digital Television (DTV) Task Force to make recommendations on how to best facilitate the transition and promote the rapid recovery of broadcast spectrum for other uses. As you know, the successful transition to digital television is a top priority of the Congress.

We invite the DTV Task Force to participate in discussions the House Energy and Commerce Committee is conducting with industry on this topic. These discussions are aimed at helping the Committee determine what remaining obstacles exist, and whether Commission action or legislation is necessary to overcome them. Specifically, at our next roundtable discussion we plan to discuss industry progress on issues relating to DTV-cable compatibility and copyright protections for digital content.

While we appreciate your commitment to a rapid transition, we must express serious concerns with the Commission's Order of September 17, 2001. This Order will permit broadcasters operating on channels 60-69 to delay their transition to DTV and, as such, is antithetical to the goals of Congress. We want to emphasize that it should not serve as a template for further Commission action in this area.

We recognize that the September 17th decision is narrow in scope and directly affects a relatively small number of broadcasters. It is an attempt, in part, to address the critical need for additional spectrum to achieve interoperability for public safety uses - without question an important and immediate public policy priority. Providing the public safety community with access to new, unencumbered spectrum must be realized as quickly as possible. However, the Commission's approach has the real potential to delay the digital television transition, while doing little or nothing for public safety communications.

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Specifically, we are concerned about creating a precedent in which some broadcasters are permitted to operate exclusively in analog format during the transition. As a general matter, this policy is contrary to Congressional intent because it acts to reduce consumer demand for digital television equipment and, hence, slow the transition. Just as important, we believe this policy is not required to achieve the critical goal of clearing the bands needed for public safety, and may even be counterproductive to that end. It is our understanding that it may be technically infeasible for many broadcasters to transmit in analog format on their digital allotments "inside the core" without causing harmful interference. If so, these stations may continue to broadcast in the 700 MHz band, exacerbating the difficulties for public safety interoperability.

It is our view that broadcasters wishing to profit from an early migration out of the 700 MHz band should be required to operate exclusively in digital format on their new allotment. In that way, the speed of the digital transition is not threatened, and the public safety community is likely to have unfettered access to more frequencies nationwide. Unfortunately, the Commission's Order neither provides public safety officials with spectrum more rapidly nor expedites the transition to DTV. This policy is unacceptable as the basis for dealing with Channels 52-59.

We also understand that there will be some broadcasters, particularly in rural areas and small markets, who – despite their best efforts – will be unable to meet the deadline to commence digital service by May 1, 2002 as required by order of the Commission in 1997. They will request, and should receive, an extension of time. However, we expect that any and all requests for extensions of time will be handled by the Commission strictly on a case-by-case basis with the party seeking the waiver bearing a heavy burden of proof according to criteria which explicitly include circumstances "that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously." (See CFR 73.624(d)(3)). We are pleased to note that both National Association of Broadcasters (NAB) and the Commission are not inclined to support a blanket waiver of the 2002 deadline.

We understand that the Commission currently is reviewing its waiver policy and is considering including "economic hardship" as a justification for granting an extension of time. We urge the Commission to refrain from expanding the waiver criteria too broadly. To the extent that the Commission decides to consider economic hardship, it should articulate clearly defined parameters. An assertion of economic hardship should not qualify a broadcaster for a waiver of its DTV build-out obligations absent clear and convincing proof that such hardship is specific to that station, prolonged and unavoidable. For example, a reference to the general state of the economy, or a temporary downturn in advertising revenue, should not suffice. Moreover, consistent with the Commission's rules, any consideration of a waiver request should weigh heavily the extent to which the petitioning broadcaster has taken *all reasonable steps* to meet the deadline, i.e., evidence of good-faith, concrete, affirmative steps toward meeting the deadline.

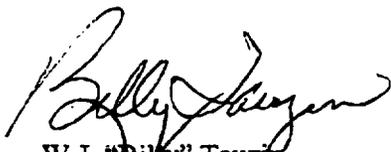
Many broadcasters, including those in smaller markets, have led the way toward the digital television era by meeting the Commission's DTV construction deadlines on or before schedule.

The commitment of these stations to comply with Commission rules is commendable, and they should not be penalized by implementation of a lenient new waiver policy at this time. To do so would send precisely the wrong signal to the marketplace, and put into question the mutual goal of Congress and the Commission to accomplish a speedy and ubiquitous transition to DTV. It is critical that the Commission adhere to and enforce these priorities.

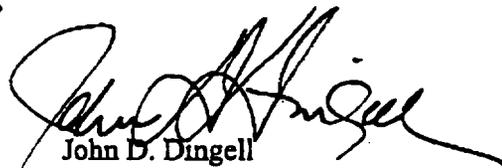
In addition, the Commission has sought further comment on a number of crucial issues pertaining to the transition such as digital must-carry, multicast must-carry, and digital tuners. It is our understanding that the comment periods have closed for these various issues. Final Commission resolution of these issues is critically important to enabling various industry players to complete business plans and better prepare for the future. Therefore, we urge the Commission to complete action on them as expeditiously as possible.

We appreciate your attention to the important matter and look forward to your reply. Please treat this correspondence in compliance with applicable Commission rules.

Sincerely,



W.J. "Billy" Tauzin
Chairman



John D. Dingell
Ranking Member