

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

In the Matter of:)
)
Second Periodic Review of the)
Commission's Rules and Policies) MB Docket No. 03-15
Affecting the Conversion) RM-9832
To Digital Television)
)
Public Interest Obligations of TV) MM Docket No. 99-360
Broadcast Licensees)
)
Children's Television Obligations of) MM Docket No. 00-167
Digital Television Broadcasters)
)
Standardized and Enhanced Disclosure) MM Docket No. 00-168
Requirements for Television)
Broadcast Licensee Public Interest)
Obligations)

TO THE COMMISSION

COMMENTS OF CIVIL RIGHTS ORGANIZATIONS

David Honig
Executive Director
Minority Media and
Telecommunications Council
3636 16th Street N.W.
Suite B-366
Washington, D.C. 20010
(202) 332-7005
dhonig@mmtconline.org

Counsel for Civil Rights
Organizations

April 21, 2003

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*/ The views expressed in these Comments are the institutional views of the Civil Rights Organizations, and do not necessarily reflect the individual views of each of their respective officers, directors, advisors or members.

Dedication: Hugh B. Price

For seventeen years, MMTC and its colleagues in the movement for media and telecom diversity have dedicated principal comments in FCC rulemaking proceedings to the great exponents of civil rights. Today it is a special privilege to dedicate these Comments to our champion and friend, Hugh B. Price.

Ten days ago, Hugh Price retired as the President and CEO of the National Urban League. Mr. Price came to the League after having enjoyed a distinguished career in journalism and television. From 1978-1982, Mr. Price served as a member of the Editorial Board of The New York Times, where he wrote editorials on such public policy issues as public education, welfare, criminal justice and telecommunications. He then served for six years as senior vice president of WNET/Thirteen in New York, where he supervised such PBS series as *Nature*, *Great Performances*, *The Mind*, *American Masters*, *Art of the Western World* and *Childhood*.

In 1994, after six years as Vice President of the Rockefeller Foundation, Mr. Price assumed the Presidency of the League and began to make his mark -- conceiving and launching the Campaign for African-American Achievement, establishing the National Urban League Institute for Opportunity and Equality, and reviving Opportunity, the League's landmark magazine. Most of us read his weekly column, "To Be Equal", which appears in African American newspapers across the country.

Active in the Academy of Political Science and the Council on Foreign Relations, the recipient of honorary degrees from Yale, Amherst, Indiana University and numerous other institutions, Hugh

Price enjoys a degree of universal respect and esteem known by few Americans in any walk of life.

In the world of communications policy, Hugh Price has made the League's voice heard in the battles to secure and then rescue the e-rate program, to develop a low power radio service, to restore equal employment opportunity policies, and to preserve diversity of media ownership.

Speaking at the Commission's King Day Observance on January 30 of this year, Mr. Price expressed the philosophy that undergirds the Comments we file today:

The National Urban League's bottom line is simply this: To promote opportunity and diversity in media ownership and equal access to the Information Highway, we need a combination of market forces and federal leadership.

The market does wondrous things. It generates wealth and opportunity. It spawns creativity and rewards efficiency and execution. It weeds out obsolescence.

But the market often doesn't lift all boats or plug all holes in the opportunity structure – even where doing so is clearly in the public interest. That's because if the expenditure of resources doesn't promise to produce an attractive economic return that can be justified to shareholders and Wall Street, then the private sector won't take the risk....

To advance the legitimate goals of media diversity and technological access and literacy for all, proactive federal leadership is imperative and inescapable. Such diversity in media employment and ownership as we have now is a direct result of visionary FCC leadership and federal legislation. To the extent the digital divide has begun to narrow, it's substantially the product of federal pressure.

The time-honored function of federal legislation, appropriations, regulations and tax policy is to induce and underwrite socially desirable behavior and to go where the market dare not tread, at least for the time being.

* * * * *

The twenty-four organizations listed in the Annex (collectively, the "Civil Rights Organizations") respectfully submit these Initial Comments in response to the NPRM.^{1/} These organizations collectively represent the interests of the nation's low income media consumers.

"The Day Television Died"

On November 24, 2007, the Commission found that 85% of the 7,500,000 television households in New York City have digital receiving equipment. Thus, at midnight on December 24, 2007, New York City's television stations returned their analog spectrum.

The next morning, over 1,000,000 New York families woke up to a snowy White Christmas on their television sets. Tens of thousands of them visited the department stores' after-Christmas sales, only to discover that a DTV-ready set costs at least \$500; even a converter box costs at least \$300. These families, many living paycheck to paycheck, as well as elderly and disabled persons surviving on social security, can suddenly yield up \$300 or \$500 only by not eating or not paying rent for weeks at a time.

On December 26, 2007, thousands of angry New Yorkers called the Commission, asking "what did you do to my television set?" At no time in the FCC's history did the agency enjoy less public credibility. This day, for the most loyal viewers, was the day television died.

Four years remain to prevent this nightmare.

^{1/} Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television (NPRM), 18 FCC Rcd _____, FCC 03-8 (released January 27, 2003) ("NPRM").

SUMMARY

The day after 85% of the public in a television market receives digital service, 15% of the public will wake up to snow on their television sets. Even if the cost of a DTV-ready set declines to \$500 and the cost of a converter box declines to \$300, millions of Americans, including elderly and disabled persons surviving on social security, will be without the means to afford "free TV." Thus, America faces the prospect of doing without universal television service for the first time since the 1950s.

A decline in television sets' ubiquity just from 99% to 92% of households would devastate our system of mass communications. After all, a national network requires nearly 100% coverage. A national advertising campaign needs 100% coverage. The nation's commerce operates on the predicate of universal coverage.

Quite apart from its commercial importance, nothing holds Americans together like universal television service. Television is the most influential force driving our cultural values and norms, our language and dialects, and the information we carry into the voting booth.

The exclusion of the least fortunate Americans from the community of television viewers would even further deepen America's seemingly intractable social class divisions. It matters to all of us whether low income families receive accurate and timely information about jobs, health care, school closings and homeland security. It matters to all of us that every American can watch when our candidates for elected office advertise or debate.

Fortunately, there are two ways to preserve 100% universal television service.

First, the Commission should hold that DTV receivers and converters are not "generally available" until they are generally affordable -- that is, until their price declines to the point where a person on a modest fixed income can afford it. The determination of the applicable price can be made when the Social Security Administration ("SSA") verifies that under the SSA's guidelines, the disposal income of an SSA recipient after satisfying basic living expenses would permit her to purchase a converter or a DTV receiver.

Second, vouchers should be made available to the truly needy to help them early-adopt DTV technology. The vouchers could be financed, in part, by permitting broadcasters to pay into a voucher fund rather than roll out expensive full-market DTV service before the public is prepared to tune in. This option would actually accelerate the return of the analog spectrum, since the target of 85% of the public having digital equipment will be reached more rapidly if low income families are early DTV adopters.

By paying into a voucher fund in this way, television licensees would satisfy at least some of low income families' need for assistance in preserving their free television service. The resources required to fully satisfy the need for this assistance can be derived from several other business groups that would benefit from such a program, including advertisers (who need 100%

coverage), cable companies (wishing to retain loyal low-income customers) wireless companies (eager to use the spectrum now used by analog TV), and television set retailers and manufacturers (happy to turn vouchers into cash). The Commission should convene these business interests in a negotiated rulemaking, and persuade them to collaboratively create and underwrite a voucher program that will ensure that the prohibitive expense of DTV conversion does not deprive any American family of television.

I. Uninterrupted Television Service To Low Income Families Should Be A Necessary Goal Of The DTV Implementation Process

Congress has mandated that DTV broadcasters return their analog spectrum when, inter alia, 85% of the public in a television market is capable of receiving DTV service.^{2/} If

^{2/} Section 309(j)(14) of the Communications Act requires the Commission to reclaim the 6 MHz each broadcaster uses for transmission of analog service by December 31, 2006. To implement this provision, Congress required the Commission in Section 309(j)(14)(B) to grant extensions to stations if any of three conditions exist. The first of those conditions ("Prong i") is that a station affiliated with one of the four largest national television networks is not yet broadcasting a digital television signal despite having exercised due diligence. 47 U.S.C. §309(j)(14)(B)(i). The second condition ("Prong ii") is that "digital-to-analog converter technology is not generally available in such market[.]" 47 U.S.C. §309(j)(14)(B)(ii). The third condition ("Prong iii"), applicable when an extension under conditions (i) or (ii) is not available, applies when 15% or more of the television households in the market (I) do not subscribe to an MVPD that carries one of the DTV channels of each of the television stations broadcasting such a channel in the market, and (II) do not have either (a) at least one television receiver capable of receiving the DTV signals licensed in the market, or (b) do not have at least one analog receiver equipped with digital-to-analog converter technology capable of receiving the DTV signals of the television stations licensed in the market. Notwithstanding these statutory provisions, as a practical matter the rollout rate for digital television will be affected by the availability of digital programming, and by the outcomes of the digital must-carry and "plug and play" rulemaking proceedings.

this is the final condition satisfied before the analog spectrum is returned, 15% of the public will wake up to snow on their television sets. Some of these Americans will immediately visit their local video retailers and purchase conversion equipment or DTV-ready sets -- if they can afford it. Indeed, unless they do so, one of their most expensive investments, their television set, will be valueless. The millions of Americans who will not be able to afford conversion equipment or DTV-ready sets would find themselves without television.

Congress expects the Commission to ensure that "a significant number of consumers in any given market are not left without broadcast television service."^{3/} We urge the Commission to afford this expectation the greatest respect. The Commission should ensure that uninterrupted television service to those needing it most -- low income families -- ranks among the highest priority goals of the DTV implementation process.

Not only is this objective morally compelled, it is consistent with longstanding Commission precedent. Traditionally,

^{3/} Balanced Budget Act of 1997, 105th Cong., 1st Sess. Conf. Rep. 105-217, 577 (1997) ("Conf. Rpt.") Chairman Powell has noted that when the analog spectrum is returned,

consumers will expect their television sets to go on working in the digital world just as they do today. This includes the ability to receive broadcast signals. Indeed, the expectation that TV sets receive broadcast signals is so ingrained that consumers simply assume this functionality is incorporated into their television set.

Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (Second R&O and Second MO&O), 17 FCC Rcd 15978, 16019 (2002) (Separate Statement of Chairman Michael K. Powell).

the Commission is exceedingly cautious about rendering communications equipment valueless as a consequence of an upgrade from one technology to another, even when the equities favoring a new technology are very attractive. For example, when the Commission considered a transition from 10 kHz to 9 kHz spacing of AM stations, it had an opportunity to create hundreds of new AM stations. The 1979 U.S. WARC delegation had successfully negotiated the adoption of 9 kHz spacing in ITU Region II, largely as a means of promoting minority ownership and expanding public broadcasting. Regions I and III already used 9 kHz spacing, so the Commission's adoption of the United States' own proposal should have been a formality. However, the Commission balked, in light of the transition costs to incumbent AM broadcasters and the loss of functionality of certain high-end digital receivers with 10 kHz spacing embedded in their chips.^{4/} Thus -- at a time when the nation only had about 100 minority owned radio stations -- the nation lost an easy opportunity to create between 200 and 1,400 more radio stations.^{5/}

4/ See 9 kHz Channel Spacing for AM Broadcasting (R&O), 88 FCC2d 290, 314-17 (1981) (Commissioners Jones and Fogarty dissenting).

5/ Other examples abound:

1. The Commission did not adopt an AM stereo system until only a handful of stations continued to use transmission systems incompatible with the system the Commission selected. See Amendment of the Commission's Rules to Establish a Single AM Radio Stereophonic Transmitting Equipment Standard (R&O), 8 FCC Rcd 8216 n. 6 (1993).

[n. 5 continued on p. 7]

No one relies more on over the air local television than low income families.^{6/} An often-neglected reality^{7/} is that nearly

5/ [continued from p. 6]

2. The Commission held back from selecting a DAB standard until engineers found an (expensive) way to avoid making either of the two systems used by broadcasters obsolete. See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service (First R&O), 17 FCC Rcd 19990, 19991 ¶¶2-3 (2002).

3. Single cell IMTS mobile service was so inefficient that even in New York City, only twelve simultaneous conversations were possible, and there were only a few thousand subscribers nationwide. See Cellular Communications Systems (NOI and NPRM), 78 FCC2d 984, 1009 (Appendix: Notes on Cellular Mobile Telephone Service) (1980). Yet when single cell IMTS replaced with cellular service, analog operators remained on duty for years (far after it was economical for them to do so) in order to continue to service the diminishing handful of remaining analog users.

4. In the development of a color television standard, the Commission was careful to ensure that color pictures could be seen on black and white sets, thereby not destroying black and white set owners' investments in their receiving equipment. Amendment of the Commission's Rules Governing Color Television Transmissions (R&O), 41 FCC 658 ¶35 (1953).

6/ In 1995, the percentage of those below the poverty line that had television sets in their homes was 95%. See www.ripon.edu/faculty/petersikt/Media_stuff/whywatch.html.

7/ "[W]hile so many white Americans are unaware of conditions inside the ghetto, there are very few ghetto dwellers who are unaware of the life outside. The television sets bombard them day by day with the opulence of the larger society." Martin Luther King, Jr., Where Do We Go From Here: Chaos or Community? (1967), quoted in Coretta Scott King, The Martin Luther King, Jr. Companion (1993), p. 68.

12% of American families still live in poverty,^{8/} including many who reside in rural areas and inner cities, as well as elderly and disabled person on social security-based fixed incomes.^{9/} Minorities remain disproportionately afflicted by poverty,^{10/} and millions of elderly and disabled Americans subsist on poverty-level fixed incomes.^{11/}

^{8/} The nation has made only slow progress eradicating poverty. In 1960, there were 40.0 million poor people and a poverty rate of 22.0%; in 2001 there were 32.9 million poor people and a poverty rate of 11.7%. U.S. Census Bureau, Current Population Survey, 1960-2002 Annual Demographic Supplements. The poverty level is provided in the Office of Management and Budget's Statistical Policy Directive 14. Following this directive, the Census Bureau uses a set of money income thresholds that vary by family size and composition to draw the poverty line. These thresholds are updated annually for inflation using the Consumer Price Index. The official poverty definition counts money income before taxes and does not include capital gains and noncash benefits such as public housing, medicaid and food stamps. Average thresholds colloquially referred to as the "poverty line" are, e.g., \$9,039 for one person, \$18,104 for a family of four. See U.S. Census Bureau, Poverty in the United States (2001), p. 5. For a history of the official poverty measure see Gordon Fisher, "The Development of the Orschansky Thresholds and their Subsequent History as the Official U.S. Poverty Measure," www.census.gov/hhes/poverty/povmeas/papers/orschansky.html.

^{9/} The Social Security Administration ("SSA") operates the Supplemental Security Income ("SSI") program, which pays monthly benefits to low-income people. Those eligible are 65 years of age or older, or are blind, or have a disability. People on SSI usually receive food stamps as well as Medicaid. The basic amount that a recipient receives per month is the same nationwide; however, many states add to the basic benefit amount. The amount is \$552 per month for one person and \$829 per month for a couple. See www.ssa.gov/pubs/10024/html.

^{10/} In 2001, poverty rates by race were: All Americans: 11.7%; Non-Hispanic Whites: 9.9%; Blacks: 22.7%; Asian and Pacific Islanders: 10.2%; Hispanics (may be any race): 21.4%. U.S. Census Bureau, Current Population Survey, 2002 Annual Demographic Supplement, Table 5: Ratio of Family Income to Poverty Threshold for People by Selected Characteristics: 2001.

^{11/} In 2001, 10.1% of Americans over 65 lived in poverty. Id.

Families in poverty literally survive from week to week. They comprise the bulk of the 15% -- and growing -- percentage of television households lacking MVPD service.^{12/} They simply cannot afford it.^{13/} Since the cost of cable and satellite service seems

^{12/} In June, 2001, the percentage of TV households which are MVPD households was 86.42%, a number which had steadily increased since June, 1998. However, the comparable figure for June, 2002 -- just released December 31, 2002 -- is 85.25%. Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Ninth Annual Report), 17 FCC Rcd 26901, 26975 (Appx. B, Table B-1, Assessment of Competing Technologies) (2002) ("Ninth Video Competition Report"). The decline in the percentage of MVPD households reflects the fact that between June, 2001 and June, 2002, there was a 1.79% increase in MVPD households but a 3.19% increase in the total number of TV households. Id. What this means, apparently, is that the rate of growth in TV households without MVPD service is outstripping the rate of growth in MVPD households. This most likely reflects immigration into the United States by families who cannot afford MVPD service, as well as migration of low and middle income families to rural areas where cable is unavailable and satellite service is prohibitively expensive. In any case, this statistical trend shows that the Commission can no longer assume that universal MVPD service will inevitably come into being and moot out the need for structural regulations that protect low income and rural families.

^{13/} New media, such as DBS, DARS, cable and the Internet, are not nearly as ubiquitous as over the air television. New media all require subscription fees, which are often quite substantial. Only a small fraction use DBS or DARS, and only about 2/3 of TV households have cable. See Ninth Video Competition Report, 17 FCC Rcd at 26975, Appx. B, Table B-1, Assessment of Competing Technologies (disclosing that as of June, 2002, 65.25% of TV households have cable, 17.30% of TV households have DBS, and 2.71% of TV households have MMDS, SMATV, HSD or OVS). The average cost of subscribing every month to cable is \$43.50; see www.bvu-optinet.com/CableTVRates.htm. The cost of satellite installation is about \$700 which includes the cost for hardware (although many companies either discount the installation-only fee or charge the consumer nothing for installation if the customer buys the hardware). A typical monthly charge is \$60. See, e.g., www.orderdsl.net/direcway-pricing.asp.

unlikely to decline,^{14/} the lowest income Americans will probably not be able to afford these services in the foreseeable future. Other information technologies, such as the Internet, are also beyond the grasp of those with few assets and with little disposable income.^{15/} Consequently, like television viewers in most of the world, the least fortunate among us must continue to rely on free television to be connected to the rest of society.

The cost of a DTV set is still about \$1,000.^{16/} Many Americans do not appreciate that it is simply impossible for

^{14/} Indeed, the cost of cable and satellite service has increased steadily over the years. According to the Bureau of Labor Statistics, between June, 2001 and June, 2002, cable prices rose 6.3%, compared to a 1.1% increase in the Consumer Price Index. Ninth Video Competition Report, 17 FCC Rcd at 26904 ¶9. The price of digital cable has increased at a greater rate than the price of satellite service. AT&T Broadband (now part of Comcast) and Time Warner typically issue price increases annually. Consumer Reports predicts that prices for cable and satellite will both increase. See www.startribune.com/stories/1229/870861.html.

^{15/} Almost 46% of Americans do not regularly use the Internet. See U.S. Department of Commerce (Economics and Statistics Administration and National Telecommunications and Information Administration), "A Nation Online: How Americans are Expanding Their Use of the Internet" (February 6, 2002), p. 73. Even when the Internet is available, its accessibility to the public is still severely truncated. As the Office of Communication of the United Church of Christ ("UCC") has pointed out, there is a 50% gap in Internet access between those earning less than \$25,000 per year and those earning more than \$75,000. See UCC Comments in MM Docket No. 01-317 (Radio Ownership) (filed March 19, 2002), p. 9 n. 28.

^{16/} In 2001, the average HDTV set sold for \$1,965; in 2002 it was \$1,356. See Smart Money (January, 2003), p. 54. At Best Buy, an HDTV set runs \$649.99 to \$3,999.99, and a converter box runs \$399.99. www.bestbuy.com (visited March 29, 2003). We assume, herein, that at the time the analog spectrum must be returned to the government, it will still be possible to purchase, at retail, a converter box that can receive digital off-air signals and convert them into analog signals. It is not clear that such converter boxes will also allow consumers to receive all of the multiplexed channels transmitted by digital television stations.

millions of their fellow Americans to suddenly produce even a few hundred dollars for any purpose, no matter how urgent.^{17/}

On the surface, it might appear that even the least fortunate among us so highly value television that digital transition should not be a problem for them. This inference is sometimes drawn from the much reported, but little understood, fact that more low income Americans own televisions than telephones.^{18/}

That statistic is not surprising at all. Over the air television is virtually free in both the long and short run. However, telephone service costs real money. Even low cost "Lifeline" POTS service can cost \$9.50 per month.^{19/} Very low

^{17/} Even in dire emergencies, many families cannot lay their hands on several hundred dollars. For example, prior to July, 2001, the State of Ohio provided up to \$750 to help pay for funerals. After that program was cut, antipoverty programs began receiving calls for assistance from families unable to afford burial costs. Funeral homes have a fund to pay for funerals of indigents who die and have no families and no one to claim the body; however, that fund is not available for families that claim the body. See www.appalachianfocus.org. A person who cannot afford to bury a family member can hardly be expected to find the money to buy a digital television set.

^{18/} In July, 2002, telephone subscribership penetration in the U.S. was 95.1%. However, it was 78.9% for households with annual incomes below \$5,000; for households with incomes over \$75,000 it was 99.5%. See <http://www.fcc.gov/wcb/iatd/stats.html>. On the other hand, television set ownership overall stands approximately 98% of American households. When data was last available in 1995, television set ownership for households with annual incomes below \$5,000 was 95%. See n. 6 *supra*.

^{19/} The "Lifeline" program provides discounts on monthly service, ranging from \$6.75 to \$9.50 per month, depending on the state. The "Linkup" program helps qualified low-income consumers initiate telephone service; this program offsets one-half of the initial connection fee, up to \$30.00. The program also includes a deferred payment schedule for these charges. Under Congressional mandate, the Universal Service Fund includes both programs. Many

[n. 19 continued on p. 12]

income families typically rely on pay phones for essential communications.^{20/}

On the other hand, the cost of over the air television is virtually zero, because television receivers are not "junk." They are built to last, and they often survive for generations.^{21/} On

^{19/} [continued from p. 11] states determine eligibility for Lifeline and Linkup by relying on a subscriber's eligibility for federal programs for low income families. In those states, the subscriber must participate in one of the following programs: Medicaid, food stamps, supplemental security income, federal public housing assistance, or the low-income home energy assistance program. See <http://www.fcc.gov/cgb/consumerfacts/lowincome.html>. Millions of families eligible for Lifeline and Linkup do not receive these services, however. For those not in the Lifeline program who receive POTS service, rates vary extensively by state. About half of the states do not have a definition of "basic service" because of complexities of rate structures in some states and the variations in telephone service across the states. The average basic service rate for states with a definition of "basic service" is \$11.95. The lowest rate was in North Carolina (\$2.56) and the highest was in West Virginia (\$36.00). See http://researchedge.com/uss/appendix_e.html.

^{20/} Usage of pay phones continues to fall, with volume per pay phone declining for an average of 712 calls a month in 1996 to 500 in 2002. However, large segments of the population, particularly in urban areas, still use pay phones almost exclusively. Approximately 20% of those living in the inner cities use pay phones because they lack phones of their own. Even people who can afford monthly payments are sometimes denied POTS and cell phones because of their inability to maintain good credit. See <http://www.pay-phone-advisor.com>.

^{21/} The "average" television set lasts for ten years. See <http://urbanext/uiuc.edu/wwl.07-01.html>. However, many receivers from the 1950s and 1960s, with rabbit ears and tubes, still glow in the living rooms of hundreds of thousands of Americans. These sets had lifetime guarantees because they really did outlive their owners. The undersigned counsel won't call the name of a very close relative who still relies entirely on the 1959 Zenith console model occupying the place of honor in her living room. It was inherited in 1972 when it was part of her farm-dwelling mother's decedent's estate. To avoid stressing the picture tube, the set has not been turned off in eight years; thus, it is also a low-cost security device. The color is a tad green, but otherwise the picture is just as crisp as the picture on a 2003 set.

the other hand, retailers of television sets typically do not accept used sets as trade-ins.^{22/} Thus, when a set owner trades up to a newer or larger set, she will typically give her old set away to relatives or neighbors, donate it to charity, or sell it for a token sum. Television sets also pass to low income families as part of decedents' estates. Even when obtained from a pawnshop or a public online site, a used television set can typically be purchased for about \$50,^{23/} and it will provide years of free service thereafter.

Further, low income families tend to regard video communications as indispensable, in the sense that there are no substitutes for it. Low income families are particularly loyal consumers of television.^{24/} On the other hand, in-home telephone communications can be sacrificed in favor of the use of a pay telephone or a neighbor's phone.

It will be years before DTV receivers are handed down as gifts or donated to charity. Thus, for the foreseeable future, everyone needing DTV will have to purchase a receiver.

Although low income families are the most loyal users of television, they are often forgotten in the rush to implement new

^{22/} MMTTC telephone survey of customer service representatives of Target, Wal-Mart, K-Mart, Circuit City and Best Buy, in the Washington, D.C. metropolitan area, March 27, 2003 (none of these companies takes television sets as trade-ins).

^{23/} On amazon.com, used analog television sets are offered for as low as \$49.99. www.amazon.com (visited March 29, 2003).

^{24/} See n. 6 supra.

technology. One of our nation's most prized assets is our virtually universal service, which exists because over the air television reaches everyone, rich and poor. A decline in television sets' ubiquity just from 99% to 92% would render serious damage to our system of mass communications. After all, a national network needs virtually 100% coverage. A national advertising campaign needs 100% coverage. The nation's commerce operates on the predicate of 100% coverage.

Quite apart from its commercial importance, nothing holds Americans together like universal television service. Television is the most influential force driving our cultural values and norms, our language and dialects, and the information we carry into the voting booth. The loss of the least fortunate Americans from the community of television would even further deepen America's seemingly intractable social class divisions.

It is simply unacceptable to exclude any segment of society from the public sphere defined by television. It matters to all of us that low income families receive accurate and timely information about jobs, health care, school closings and homeland security. It matters to all of us that every American can watch when our candidates for elected office advertise or debate.

We would never throw millions of Americans out of our hospitals, schools or voting booths. Likewise, the Commission should declare, as a matter of the highest priority, that it will not preside over the loss of universal television service, and that it will not permit low income families to be priced out of the public sphere defined by television.

II. The Commission Should Declare That DTV Reception Is "Generally Available" When It Is Generally Affordable

The second prong ("Prong ii") of Section 309(j)(14)(B), which identifies the conditions requiring the return of the analog spectrum in a television market, is that "digital-to-analog converter technology is not generally available in such market[.]"^{25/} The NPRM poses the question "[s]hould the price of such units be considered?"^{26/}

The answer is Yes. The Commission can avoid the catastrophic loss of television service by low income families by applying the common sense meaning of the words "generally available" as it appears in Prong ii. "Generally available" should mean "generally affordable."

For a person with no savings, living on a fixed social security or comparable income, and dependent on free television as her lifeline to the world, a converter box is not "generally available" if it costs even \$50. It might as well be a yacht. For millions of Americans, a converter box is certainly not "generally available" if it costs \$400, as it does now. In no meaningful way will DTV will be "available" to low income families until they can afford it.

Construing "generally available" to mean "generally affordable" makes sense, for two reasons:

First, without this construction, the word "generally" is superfluous. Congress does not include superfluous words in

^{25/} 47 U.S.C. §309(j)(14)(B)(ii).

^{26/} NPRM at 31 ¶83.

statutes. Had Congress meant simply that a converter box can be bought, by some person, in the market, at some price, the statute would only have used the word "available" without the modifier "generally." By inserting the word "generally", Congress must have intended that a person could reasonably be expected to possess the funds to buy a converter.

Second, without a price requirement implied in Prong ii, there would have been no need to have Prong iii of Section 309(j)(14)(B), which relates to consumer ownership of DTV reception equipment. Congress would hardly have bothered writing legislation premised on both the availability of receiver equipment at an affordable price and consumers' ministerial act of going to the store and physically purchasing the item.

What, then, is the price at which DTV reception equipment is "generally available" to the public? One reasonable answer would be that DTV receivers and converters are "generally available" when their price has declined to the point where a person on a fixed social security or comparable income can afford it. To implement this holding, the Commission should ask the Social Security Administration to verify that, under the SSA's then-applicable guidelines, the disposal income of an SSA recipient, after satisfying basic living expenses for safe and decent housing, nutritious meals, and quality health care, would permit her to purchase a converter or a DTV receiver.^{27/}

^{27/} The Social Security Administration's opinion of the buying power of low income Americans is entitled to the greatest respect. See n. 9 supra.

III. A Voucher Plan for DTV Equipment Purchases Could Ease Low Income Families' Conversion Costs, Relieve Broadcasters Of The Burden Of Excessive Pre-Transition Expenses, And Accelerate The Return Of The Analog Spectrum

Owing to the extraordinary cost of DTV transmission equipment, many broadcasters need additional time to roll out their service to cover an entire market.^{28/} While initially indulgent of these requests, the Commission is now considering the imposition of extraordinary remedies, including forfeitures and the revocation of the station's DTV authorization.^{29/}

^{28/} According to broadcastengineering.com, full power DTV stations

are not built cheap. High-power transmitters start at more than \$300K and can push \$1 million for a high-power upper UHF rig....High power upper end UHF antennas can reach \$500K. Installation costs...can range from a few thousand dollars and quickly reach \$100K. Transmission lines feeding the antennas aren't inexpensive either. Feedline can easily cost \$100K on a 1500 to 2000 foot tower. While a relatively less expensive 3 1/8-inch transmission line can be used for VHF antennas, that line has to be 9-inch or larger waveguide for high power upper UHF band applications. This can push the cost of the waveguide to \$400K...The cost of materials to build a tower can hit \$1 million dollars quickly. If you need one that's 2000-ft tall, be prepared to spend \$2 million before it's even erected. Stacking steel 1500-ft in the air creates a lot of weight on the concrete foundation. Plan another \$200,000 just for the foundation. Now, you're ready to have the tower erected. Cost: \$300K.

The cost of building the RF portion of a DTV system ranges widely. An RF system providing modest power in the VHF range, requiring no new tower, can be done for less than \$500K. If you need a new 2000 foot tower add \$2.5 million. If you need a high power, high UHF channel operation and a new tower you're over \$4 million.

http://rfupdate.broadcastengineering.com/ar/broadcasting_high_power_high/.

^{29/} See NPRM at 6 ¶13; see also Remedial Steps for Failure to Comply with Digital Television Construction Schedule (R&O) and Memorandum Opinion and Order on Reconsideration, FCC 03-77 (released April 16, 2003) ("Remedial Steps") at 3-4 ¶¶10-12.

A better approach would be for the Commission to grant extensions of time to these broadcasters, contingent upon their payment into a fund that would provide equipment vouchers for low-income families. The vouchers could be used to purchase DTV-ready sets or, possibly, converter boxes.^{30/} Ideally, a voucher for an

^{30/} It would be a mistake to limit vouchers to converter boxes and exclude their use for DTV-ready sets, for two reasons:

First, until DTV conversion actually occurs, a converter box has no value to a family struggling just to put food on the table and a roof over its head. It is unlikely that members of low income families would visit an electronics store to obtain an item that delivers no short term value to the household. Thus, a successful voucher program cannot be premised on seeking early adoption of converter boxes.

Second, DTV is premised as a way of helping close our social class divisions by delivering more variety and programming diversity. The Advisory Committee on Public Interest Responsibilities of Digital Television Broadcasters has stated:

[W]e have recommended that innovation in the use of digital channels for multiplexed, multichannel programming not be discouraged by government policy. A multichannel digital broadcasting model could, of course, include program streams that are "narrowcasts" aimed at distinct audiences, including minority groups and underserved communities. Multiplexing could also create new opportunities for minority entrepreneurship through channel-leasing agreements, partnerships, and other creative business opportunities.

We have also recommended that, at the end of the transition, one new 6 MHz broadcast channel should be reserved in each market for noncommercial, educational purposes, including the provision of educational programming directed at minority groups and other underserved communities. We have recommended that the flexibility of digital technology be exploited by the use of newly available audio channels to help serve the needs of individuals with disabilities. The Advisory Committee wants to emphasize that this enhanced audio capability will also facilitate increased use of foreign language audio tracks to expand the usefulness and entertainment value of broadcast programming for minority communities, and we recommend that broadcasters take

[n. 30 continued on p. 19]

early adopter would cover the entire cost of the equipment.^{31/}
A family would be eligible for a voucher if it does not subscribe to more than the lowest cost basic tier of cable,^{32/} and if it is eligible for one of a number of federal programs for which only low income people qualify.^{33/} The vouchers would be recipient-specific, so they couldn't be sold or traded.

^{30/} [continued from p. 18]

advantage of this capability. Finally, our recommendations on ways that political discourse can be made more effective in the context of digital television will have a direct impact on the diversity of viewpoints that will be available on television in the future.

Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on Public Interest Responsibilities of Digital Television Broadcasters (1998), p. 63, Recommendation 9 (Diversity in Broadcasting). In order to ensure that low income families have full access to the fruits of digital technology, a voucher program should be designed to incentivize low income families' early adoption of DTV receivers.

^{31/} In theory, a voucher could be designed so that it does not quite cover the price of a DTV set, with the low income family paying a token amount of the total cost. A requirement that a very low income family "pay something" for DTV could be regarded as a way to make less fortunate people more "responsible." However, low income families, such as the elderly living on social security, had no "responsibility" for the decision to adopt DTV and to render one of their households' most valuable possessions valueless. There is no equitable reason to wring a few dollars from these families for feel-good purposes.

^{32/} A family that can afford MVPD service probably does not need a voucher. A leased set-top box might raise consumer bills by only \$2.00 per month. On the other hand, family that cannot afford a \$300 converter box cannot afford (e.g.) \$40 per month for cable television either.

^{33/} For example, a family could be deemed eligible for a DTV voucher if it is eligible for Housing Choice Vouchers, the National School Lunch Program, or the Food Stamp Program. These are each described below.

[n. 33 continued on p. 20]

The vouchers would have a fixed expiration date (e.g., one year), to assure early DTV adoption by the voucher recipients.

A broadcaster's payments into the fund would be less than the value to the broadcaster of the additional rollout time, but

33/ [continued from p. 19]

Housing Choice Vouchers (formerly known as "Section 8") is the federal government's major program for assisting very low income families, the elderly and the disabled to afford safe, decent housing. Eligibility for a housing voucher is determined by the local public housing agency based on the total annual gross income and family size. In general, a family's income may not exceed 50% of the median income for the county or metropolitan area in which the family chooses to live. By law, a local public housing agency must provide 75% of its vouchers to applicants whose incomes do not exceed 30% of the area median income. The housing voucher family must pay 30% of its monthly adjusted gross income for rent and utilities. See <http://www.hud.gov/offices/pih/programs/hcv/index.cfm>.

The National School Lunch Program is a federally assisted meal program operating in more than 99,000 public and nonprofit private schools and residential child care institutions. It provides nutritionally balanced, low cost or free lunches to more than 25,000,000 children. The Food and Nutrition Service administers the program at the federal level; state education agencies usually administer the program at the state level. Schools that participate in the program receive cash subsidies and donated commodities from the USDA for each meal they service. In return, they must serve lunches that meet federal requirements. Children from families with incomes at or below 130% of the poverty level are eligible for free meals. Those with incomes between 130% and 185% of the poverty level are eligible for reduced price meals. See <http://www.fns.usda.gov/cnd/Lunch/default.htm>.

The Food Stamp Act of 1977, as amended, establishes uniform national eligibility standards for the Food Stamp Program. The eligibility criteria include gross and net income limits, an asset limit, and various nonfinancial criteria. Generally, a household without an elderly or disabled member must have a monthly gross income that is at or below 130% of the poverty guidelines. Households with elderly or disabled members are not subject to the gross income standard. A family must also have a net monthly income at or below 100% of the poverty guideline. Finally, a household must have less than \$2,000 in cash or convertible-to-cash assets, or \$3,000 if at least one member is age 60 or older. See <http://www.usda.gov/fsp/faqs/htm#2>.

sufficient in value to subsidize a considerable number of vouchers. For example, a broadcaster could calculate its short-term savings, pay 70% of it into the fund, and retain the other 30%.^{34/} In this way, it would be worthwhile to a broadcaster to pay into the fund and thus avoid having to broadcast full service DTV at a time when few viewers are watching.^{35/}

The fund could be administered, and the vouchers distributed, by a consortium of broadcasters, by a trade organization, or by a public or private organization serving low income families.^{36/}

Some of the corpus of the fund could be used to handle modest fund administration costs. Retailers would have to agree to honor the vouchers, but it should not be difficult to secure their cooperation. The vouchers would be redeemable for cash, and they would translate into more sales. Receivers are sold by a fairly short list of large retailers, so securing retail industry cooperation should not be difficult. Receiver manufacturers

^{34/} A broadcaster should be able to retain some of the savings. When an 85% rate of digital equipment adoption is almost attained, a broadcaster will have to build out the full coverage signal quite rapidly, and it will need a cushion to pay for this expedited buildout.

^{35/} Some broadcasters, especially very small-market stations, independents, and noncommercial stations, are going to have difficulty providing any DTV service. Perhaps these broadcasters should be allowed to delay their buildout and be exempted from having to contribute to a voucher fund. The standard that could be applied already exists in another context. Cf. Review of the Commission's Regulations Governing Television Broadcasting (R&O), 14 FCC Rcd 12903, 12938-40 ¶¶78-82 (1999) (subsequent history omitted) (creating the "failing stations" waiver criteria applicable to the the TV the duopoly rule).

^{36/} The National Urban League advises that through its 106 chapters, it would be agreeable to helping administer such a program.

should also be expected to embrace this initiative, since it would yield higher early sales volume.^{37/}

For the most part, vouchers are noncontroversial. Examples of well established voucher programs include Housing Choice Vouchers (formerly "Section 8") and the Food Stamp Program.^{38/} In these programs, low income families are given a modest subsidy to help them survive while they try to get back on their feet.^{39/}

Another example of vouchers is found in the field of childhood education. An education voucher program provides assistance to low income families wishing to enable their children

^{37/} It is unlikely that broadcaster contributions attendant to full-market buildout extensions would be sufficient to fund the entire need for a voucher program. For example, in large markets, no broadcaster may need a buildout extension, and large markets may be those with greatest need for vouchers. Nonetheless, and by way of example, suppose that in a medium or small market, in 2004 and 2005, five broadcasters each pay \$50,000 into the fund, thereby raising \$500,000. Of this sum, \$100,000 is used for administration, thus leaving \$400,000 for vouchers. If the vouchers are worth (e.g.) \$400 each, the \$400,000 would provide 1,000 vouchers. Suppose the market has 200,000 families, five percent (10,000) of which receive food stamps or federal housing assistance, with half of these families (5,000) needing assistance in order to buy conversion equipment. Vouchers would cover 20% of the need. Certainly, this would be insufficient. However, the insufficiency of a remedy is never a good reason to reject it out of hand.

^{38/} See n. 33 supra.

^{39/} Id.

to attend private schools.^{40/} Although many people strongly disagree that the public schools are a suitable venue for a voucher program, everyone agrees that hunger and homelessness are inferior to nutrition and housing. Similarly, everyone agrees that analog television is inferior to digital television.

The potential benefits of a voucher program are quite numerous and substantial:

1. The program would make low families early DTV adopters, thereby reducing the time it will take to secure 85% DTV adoption. To be sure, the delay of some broadcasters in providing full market DTV signals might slow the rate of DTV set adoption. However, that effect would be minimal because the vast majority of television stations, including big-four network affiliates, will already have rolled out full market service. More than offsetting any impact of slower full-market DTV service rollout on consumers' DTV adoption rate would be the considerable positive impact of early DTV adoption by low income families. In the absence of a voucher program, we can expect that as the DTV equipment adoption

^{40/} School vouchers redirect the flow of education funding, channeling it directly to individual families rather than school districts. This allows families to select the public or private schools of their choice and have all or part of the tuition paid. Vouchers can be funded and administered by the government, by private organizations or by some combination of both. Supporters of this concept believe that voucher programs are an effective way to help low-income families become active consumers in the educational marketplace, and that vouchers can help reduce the educational gap facing inner city children by enabling them to attend certain private and parochial schools. Critics of vouchers believe that school vouchers institutionalize a two-tier system of haves and have-nots, harming public schools to improve private and parochial schools, while allowing private schools to choose which students they will accept and reject. See <http://schoolchoices.org>.

rate begins to close in on 85%, attainment of each additional percentage point increase in the adoption rate will require more time than did the previous point. The reason is that each additional percentage point must include DTV adopters who are less likely to subscribe to an MVPD and who have, progressively, lower and lower incomes. However, if vouchers enable many of the lowest income people to be early adopters, the remaining pool of nonadopters will be relatively wealthier than would otherwise be the case. Consequently, the 85% target would be attained more rapidly. We could anticipate that at about the 80% adoption point, all television stations would complete their full power buildouts, and the 85% target would then be attained fairly rapidly.^{41/} Congress should welcome this speedup in the DTV conversion process.

2. Broadcasters would realize cost savings on their buildouts, and would not waste money providing full market coverage when few viewers are watching.

3. The Commission would not have to use forfeitures and license revocations to secure broadcaster's cooperation with its buildout schedule.

4. Retailers and equipment manufacturers would generate additional sales revenue.

^{41/} The Commission has acknowledged the logic of this analysis. See NPRM at 4-5 ¶6 ("[o]nce broadcast stations have commenced at least the minimum permissible level of service to their communities, DTV set penetration levels should increase and marketplace forces should work to speed the transition and provide an incentive to broadcasters to provide service to outlying areas.")

5. After 2006, low income families would not have to choose between financial hardship or the absence of television. Further, many low income families would be among the first to receive the additional service quality and program diversity provided by digital television.

6. Most of all, the nation will have found a way to preserve its system of universal television service, which has served the public well for two generations.

There are alternative strategies to help low income families with DTV conversion, but they appear less attractive than vouchers. For example, Congress could provide funds from auction revenues for low income families' equipment costs, or simply appropriate money to buy DTV sets and give them to low income families, but these approaches are unlikely to generate support in light of the costs of the war and reconstruction. Congress could also raise the 85% trigger to (e.g.) 98%, but that appears politically unlikely. Finally, a spectrum usage fee could be imposed on broadcasters and dedicated to vouchers, but such a fee would further increase the cost of entry into television station ownership for small and minority new entrants -- just at the time when entry is likely to become more difficult due to structural ownership consolidation.

Thus, DTV vouchers may present the last clear chance for the nation to hold together its remarkable and valuable system of universal television service.

Fortunately, Congress did not disable the Commission from taking steps to cushion the blow of DTV conversion for low income families. No statute precludes the Commission from creating incentives for a system of vouchers to assist low income families to pay for DTV conversion equipment. Indeed, Congress expects that "a significant number of consumers in any given market are not left without broadcast television service."^{42/} The Commission has ample authority to take actions that would facilitate the creation of a voucher program,^{43/} and the Commission has recognized that compelling circumstances can be weighed in the implementation of the DTV buildout schedule.^{44/} All the Commission needs is the will and a plan -- issues addressed in the closing section of these Comments, infra.

^{42/} Conf. Rpt., p. 577.

^{43/} The Communications Act affords the Commission wide authority to determine, in the public interest, "date date upon which the station is expected to be completed and in operation", 47 U.S.C. §319(a). In its licensing of advanced television services, the Commission may issue regulations that specify the full range of operating attributes, including such other "regulations as may be necessary for the protection of the public interest, convenience, and necessity", 47 U.S.C. §336(b) and §336(b)(5). Further, the Commission has bedrock authority to "generally encourage the larger and more effective use of radio in the public interest", 47 U.S.C. §303(g).

^{44/} When determining the remedies for waivers of the DTV buildout schedule, the Commission may consider the mitigating impact of a licensee's election to participate in a voucher program. The potential loss of universal television service, and the potential stripping-away of low income people from the television community are certainly "extraordinary and compelling circumstances" that would justify the deferral of a station construction deadline. See Remedial Steps, supra, at 3 ¶10.

IV. The Commission Should Convene A Negotiated Rulemaking To Ensure That All Stakeholders Do Their Part To Finance A Voucher Program

Every opportunity to protect low income families deserves consideration. All of the economic stakeholders should begin now to seek agreement on who should bear the costs of a voucher program and on who should be eligible to receive its benefits.

All stakeholders have strong incentives to ensure the success of a voucher program. In particular:

- Broadcasters would benefit, because vouchers would ensure the continued patronage of their most loyal viewers.
- Advertisers certainly would benefit. Low income families are bedrock consumers of staple products such as food and laundry detergent. The manufacturers of branded products compete aggressively for the dollars and food stamps of low income families. Political advertisers, especially, would benefit from the continued existence of a medium of visual expression that instantly reaches virtually 100% of the electorate.
- The cable industry would benefit. Suppose a family is struggling even to pay for basic cable, and that family is also faced with the loss of all television service unless hundreds of dollars are made available for the purchase of DTV equipment (or a sizeable monthly charge is imposed for a converter box). Some families will elect to buy a DTV set -- and finance their purchase by going without cable service entirely.
- Video equipment manufacturers and retailers certainly would benefit from vouchers. A voucher is the same as cash, and that cash would not walk in the door absent this voucher program.
- The wireless industry, and other future users of what is now analog spectrum, would enjoy the more rapid return of that spectrum to the government by broadcasters. As we have noted, when low income families are early adopters of DTV, the magic 85% number triggering the turn-off of analog signals will be attained earlier in time than would otherwise be the case. 45/

45/ See pp. 23-24 supra.

Certainly the "free rider problem" poses an impediment to a voucher initiative. Retailers, for example, might ask "why should we contribute to this program, which will go forward anyway if we do nothing but collect the vouchers, exchange them for cash, and pocket the cash?" Fortunately, all industries affected by the FCC traditionally come together and act in unison when the agency makes the case that an issue affecting all of these industries implicates a great national interest. Indeed, the transition to DTV itself is coming about through the cooperation of America's equipment manufacturers and retailers. The same can be said for the adoption of FM, FM stereo, color television, and the original Emergency Broadcast System.

Consequently, we urge the Commission to convene all stakeholders, and impress upon them that it is in the national interest to devise and implement a system of vouchers in order to preserve universal television service. The Commission has broad authority to convene negotiated rulemakings.^{46/} A proceeding such as this one, in which the most basic underpinning of our system of television is at stake, is an excellent candidate for such a procedure. The involvement of all stakeholders in a negotiated rulemaking is the best way to ensure that there "the day television died" will never arrive.^{47/}

^{46/} Procedures for negotiated rulemakings are set out in 5 U.S.C. §561 *et seq.*

^{47/} See p. 1 *supra*.

Respectfully submitted,*/

David Honig

David Honig
Executive Director
Minority Media and
Telecommunications Council
3636 16th Street N.W.
Suite B-366
Washington, D.C. 20010
(202) 332-7005
dhonig@mmtconline.org

Counsel for Civil Rights
Organizations

April 21, 2003

*/ The Civil Rights Organizations recognize with appreciation the research and editorial assistance of Fatima Fofana, Esq. and LaTasha Burney. The advice provided by Deborah Lathen, Esq., S. Jenell Trigg, Esq. and Benjamin Perez, Esq. is warmly appreciated. Finally, a special debt is owed to Henry Geller, Esq., who in 1998 originated an early version of the concept presented here and whose advice as we developed the idea has been indispensable. Thank you, Henry -- as always you are a treasure.

ANNEX

CIVIL RIGHTS ORGANIZATIONS

Alliance for Community Media
Alliance for Public Technology
American Federation of Television and Radio Artists
American Hispanic Owned Radio Association
Black College Communications Association
Communications Commission of the National Council of Churches, USA
Communications Workers of America
Fairness and Accuracy in Media
League of United Latin American Citizens
Minority Business Enterprise Legal Defense and Education Fund
Minority Media and Telecommunications Council
National Asian American Telecommunications Association
Minority Media and Telecommunications Council
National Asian Pacific American Legal Consortium
National Association of Black Journalists
National Association of Black Telecommunications Professionals
National Association of Latino Independent Producers
National Association of Minority Media Executives
National Bar Association
National Coalition of Hispanic Organizations
National Hispanic Media Coalition
National Urban League
Office of Communication, Inc., United Church of Christ
Telecommunications Research and Action Center