

Statement of

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To

**Committee on Commerce, Science and Transportation
United States Senate**

On

Transition to Digital Television

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Good morning. I am pleased to be here today to discuss federal policies concerning the transition to digital television. I am Vice President for Policy and Management at the Competitive Enterprise Institute, a non-profit, 501(c)3 public policy organization that focuses on regulatory policy. Founded in 1984, we have been active on a wide range of technology policy issues. I previously served at the Federal Communications Commission, where I was Deputy Chief of the Office of Plans and Policy from 1990 to 1993.

Advanced television is a technology that has long been in development, and on the public policy plate for many years. Members of the committee may remember the hype that accompanied advanced television during the 1980s, when many touted it as the greatest technological advance since the invention of television itself. It was also seen by many at that time as a necessary step to keep pace with the Japanese, who were perceived as having a

significant lead in the technology. Fortunately for the U.S., however, we did not jump into advanced television at that time, as the technology was then analog based – digital advanced television did not become available until several years later. We narrowly missed being locked into an obsolete technology.

Under congressional guidance, the FCC allocated frequencies and set standards for digital advanced television in the late 1990s. Aware of the dangers of being locked into a specific technology, the commission wisely did not mandate that “high-definition television,” using the highest level of resolution be used. Instead, broadcasters would be allowed to provide other services to their viewers as appropriate, including the possibility of multi-casting multiple channels of programming, or providing simultaneous data transmissions.

In a departure from recent practice with other new services, however, no competitive bidding was used to determine the licensees for this new service. Instead, licenses were assigned to existing broadcasters. Broadcasters would then hold two licenses – their existing “analog” license and a new “digital” license, for a transition period. Nominally, this transition period was limited – to expire on December 31, 2006, but an extension was required by statute if 85 percent of households in a market did not have access to digital television by that date, either directly or through a multi-channel provider, such as cable.

As you know, there was considerable opposition to this plan.¹ On equity grounds, this plan represented a transfer of a immensely valuable resource, worth tens of billions of dollars, free of charge to the broadcast industry. Perhaps of even greater concern were the economic concerns that by protecting the frequencies from marketplace pressures, it would be less likely to be used as efficiently as possible.

Nevertheless, the plan was adopted, largely on the premise that the additional spectrum provided to the broadcasters was only for a short period of time. It was to be a loan, not a giveaway.

Today, however, the status of that loan is in doubt. Based on current adoption rates, digital television is extremely unlikely to achieve the 85 percent goal by 2006.

This is not to say that DTV has been a total failure. The record has been mixed. In the first year or so that DTV units were available, sales were miniscule. Last year, however, sales increased substantially, with some 600,000 total units sold, according to the Consumer Electronics Association (CEA). Earlier this week, the CEA announced that January factory-to-dealer sales of DTV units totaled 81,629, a 234 percent increase over last year. It predicted 1.1 million units to be sold in 2001, and 10.5 million to be sold by 2006. This is pretty much

¹ Along with others, I testified before this Committee in favor of competitive bidding in March 1996.

what the Consumer Electronics Manufacturers' Association (CEMA) predicted when sales began in 1998, which originally predicted 10 million in sales between 1999 and 2003.²

There are some important caveats to these numbers, however. First, the CEA numbers refer to sales to dealers. The number of units sold to consumers is much lower, about 200,000 last year according to one report.³ In addition, many consumers are buying DTV monitors separately, instead of integrated sets that allow them to receive broadcast signals without a set-top box. The number of such integrated sets sold has only a small fraction of total unit sales. As a result, despite the impressive total number of units sold, the number of people watching digital broadcasts is still extremely small.

Even CEA's more optimistic numbers, however, raise a concern about the digital transition. At that rate, market penetration would almost certainly be far below the 85 percent needed to trigger a return of the analog spectrum. In fact, if the numbers track CEMA's original projection, consumer penetration would only be at 30 percent in 2006. As a result, we may face a long wait – perhaps decades -- before the spectrum “loaned” to broadcasters is returned.

This delay is of particular concern to taxpayers and consumers because of the potential value of this spectrum in alternative uses. The frequencies involved are (in spectrum terms) prime real estate, and could be employed for a variety of wireless services, including third-

² Timothy Somheil, “TV or DTV?”, *Appliance*, December 1, 1998.

³ Cited in *Electronic Engineering Times*, December 22, 2000.

generation mobile services. Given the wide variation in auction revenues over the years, putting a specific value on these frequencies is a tricky business, but it is sure to be significant. Last year's re-auction of the "C-block" PCS spectrum alone garnered some \$17 billion.

A number of approaches have been proposed for dealing with this situation, many of them bad. One approach is to increase content regulation of broadcasters. Such regulation could decrease the value broadcasters receive from the spectrum, in effect decreasing the size of the giveaway. The problem is that it would also punish consumers, by limiting broadcasters' ability to provide them with what they want. It also raises significant free speech concerns. Government intrusion into content is simply not an answer to spectrum management problems.

Various forms of economic regulation have also been proposed in order to drive consumers to DTV. The FCC, for instance, recently began an inquiry into whether all new receivers should be required to accept digital signals. While such a step was taken in regard to UHF signals, policymakers should always be careful about imposing such mandates. As a practical matter, such a requirement could impose significant costs on consumers – as much as several hundred dollars. More broadly, despite all the promise of DTV, there is no guarantee that consumers will ultimately prefer it. A decision should not be forced on them by policymakers.

Another option would be to simply require the return by broadcasters of analog television licenses on the original date of December 31, 2006. That would certainly be a fair

option, for it would merely hold broadcasters to the original agreement to return the frequencies. It would also serve the important goal of making this spectrum available for other uses.

A mandated end to analog broadcasting, however, would also put the government in the position of picking technological winners and losers for consumers. Millions of consumers, having arguably rejected DTV in the marketplace, would be mandated to convert to another technology.

It may be possible, however, to terminate current analog licenses, while allowing the ultimate choice of technology to be left to the market. Broadcasters, for instance, could be allowed to negotiate with the new license holders to continue to use their frequencies for analog broadcasting. Under such an approach, if analog broadcasting were sufficiently valued – more so than other wireless services – then it could continue. If consumers found alternative wireless services more valuable, then analog broadcasting could be discontinued.

An alternative marketplace approach would involve providing incentives for broadcasters to vacate spectrum, rather than having them pay to remain. Under a voluntary band clearing mechanism adopted by the FCC, broadcasters are encouraged to negotiate with potential new wireless licensees on that spectrum to vacate their frequencies. Specifically, the Commission established a rebuttable presumption that such agreements to relocate are in the public interest.

This voluntary approach seems to create a win-win situation for all involved. The new wireless licensees receive access to spectrum much more quickly, allowing consumers to more quickly benefit from those services. Broadcasters are not required to relocate, but will gain the incentive to do so. This incentive would be proportionate to the value of their stations – meaning the least-watched stations would (all things being equal), the first to relocate, and the most-watched stations the last. And broadcasters who do enter into agreements receive payments that could be used to finance their transition to digital television.⁴

Currently, this policy is in effect for channels 60-69 (and for three-way deals involving broadcasters on other channels). Based on the success of this policy, the Commission will determine whether to extend voluntary band-clearing down the dial to channels 52-59. It is too early to assess the success of this policy, but it looks promising.

Conclusion. The debate over advanced television has been a long-running one for the FCC and for Congress. The issues are complex ones; I know there are no simple answers. At the moment, however, it seems very likely that an extended digital television transition period will cause valuable spectrum to be misallocated, and deprive consumers of valuable wireless services they want and need. The answer to this problem, however, is not new regulation to

⁴ To facilitate such negotiated relocating, one firm, Spectrum Exchange, has already outlined plans to hold a “secondary auction” simultaneously with the FCC’s auction of these frequencies. This auction will help bidders ensure that the spectrum they receive licenses for coincides with the broadcasters with whom they enter into band clearing agreements.

punish broadcasters or to mandate use of preferred technologies. Instead, policymakers should look for ways to use market mechanisms to ensure the best use of spectrum resources.