

**Before the  
Federal Communications Commission**

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

**COMMENTS OF  
CONSUMER FEDERATION OF AMERICA**

**TABLE OF CONTENTS**

<a href="#"><u>INTRODUCTION</u></a> .....	1
<a href="#"><u>MISMANAGING PUBLIC ASSETS</u></a> .....	1
<a href="#"><u>GOING NOWHERE, SLOWLY</u></a> .....	3
<a href="#"><u>IT MAKES NO SENSE TO FORCE CONSUMERS TO PAY MORE FOR LESS USEFUL DIGITAL TV SETS AND RECORDING DEVICES</u></a> .....	4
<a href="#"><u>THE FCC MUST ENSURE THAT PUBLIC INTEREST OBLIGATIONS EXPAND AS THE ROLE OF DIGITAL MEDIA EXPANDS</u></a> .....	5

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## INTRODUCTION

The Consumer Federation of America is the nation's largest consumer advocacy organization. CFA is a non-profit association of 300 state and local affiliates representing consumer, senior citizen, low-income, labor, farm public power and cooperative organizations. CFA represents consumer interests before Congress and federal agencies and assists its state and local members in their local jurisdiction.

CFA has participated in public policy on the transition to digital television before the Federal Communications Commission (FCC) and the Congress. We filed comments<sup>1</sup> and reply comments<sup>2</sup> in the Public Interest Obligations proceeding, as well as the digital tuner<sup>3</sup> and broadcast flag proceedings.<sup>4</sup> We have also testified before Congress on the transition.<sup>5</sup>

## MISMANAGING PUBLIC ASSETS

With the support and connivance of the Federal Communications Commission, the broadcast industry has botched the transition to digital TV. Given a \$70 billion gift of the most valuable real estate in the digital age, the broadcasters have dragged their feet in investing in station upgrades and delayed the developing digital programming. Instead, of producing programming, they have produced excuses – blaming equipment manufacturers, cable companies, and content pirates. The FCC has acquiesced in this charade, granting

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<sup>1</sup> March 27, 2000.

<sup>2</sup> April 25, 2000.

<sup>3</sup> *A Consumer Friendly Industrial Policy for the Transition to Digital TV*, September 25, 2002 Submitted to the Subcommittee on Telecommunications and the Internet, House Energy and Commerce Committee

<sup>4</sup> "Comments Of The Consumer Federation Of America, et al.," *In the Matter of Digital Broadcast Copy Protection*, Federal Communications Commission, MB Docket No. 02-230 December 6, 2002; "Reply Comments, February 18, 2003.

<sup>5</sup> "Statement of Dr. Mark Cooper, Director of Research, Consumer Federation of America, Regarding Digital Television on Behalf of Consumer Federation of America and Consumer's Union" before the *Senate Commerce Committee*, March 1, 2001.

waivers, extending deadlines, and, most recently, imposing additional costs on consumers of TV sets.

With little to watch, few consumers have been willing to buy the more expensive digital TV sets, but the Commission has forced set manufacturers to put expensive tuners in the sets, even though 90 percent of the households do not need a tuner to get their TV pictures. Consumers who were forced to give their spectrum as a gift to the broadcasters are now forced to give again, in the form of higher prices for their TV sets. And, if the broadcasters have their way and impose technology requirements for in the form of a broadcast flag, consumers will pay more for sets that are less useful.

The FCC's abysmal stewardship of digital spectrum is nowhere more evident than in its failure to articulate a set of public interest standards to apply to this remarkably valuable public asset. The public interest Notice of Inquiry is now three and a half years old and the Commission admits that they record is so stale that it must be refreshed.

In short, the Commission rivals the industry in its foot dragging and mismanagement of the transition to digital TV. In truth, there is not transition to digital TV. Instead, there is a patchwork of hit and miss conversions of occasional signals, without full power and almost no receivers capable of tuning in the digital signals, if they were there and could be found.

The transition from analog to digital television held out great promise to all consumers for more, and higher quality programming, as well as interactive and other enhanced services. Enhanced digital services promise new applications for the disabled as well as serves that will raise the level of civic and political discourse. Almost a decade after the debate over the spectrum give-away, the FCC is still issuing notices to discuss how much longer to allow the broadcasters to hold onto this gift without utilizing it to serve the public. The FCC worries

more about the stock prices of the broadcast stations, than the pocketbooks of the American public, and does not care one whit about the public interest.

It is time to stop the madness. In these initial comments, we recount the history of the failure of the FCC to manage digital spectrum in the public interest. We are certain to hear another litany of excuses and will respond at length in replies.

### **GOING NOWHERE, SLOWLY**

To speed the fulfillment of the promise, the Congress provided broadcasters with access to a \$70 billion digital spectrum almost a decade ago. The FCC was to be the steward of this immensely valuable public asset. Broadcasters have not fulfilled their responsibilities to a timely transition. This failure makes the blatant corporate welfare that the networks received, free access to the digital spectrum, even more troubling. Of the nation's 1,304 commercial broadcasters, 780 claim to be "on the air" in DTV. But, of the 780, the majority—433 are operating under temporary license at less than fully authorized power. These low power stations are not fully replicating their analog service contours in digital—that means that some percentage of homes within their analog service area cannot receive their digital signal. That leaves only 347 broadcasters currently operating full power DTV facilities and they only provide digital programming a few hours a day.

Broadcasters have a clear business incentive to postpone investment in full power facilities. But while they impose more and more costs on consumers through tuner mandates and mandatory receiver performance standards, they fail to live up to their obligations to get a full power signal on the air.

The FCC must no longer allow broadcasters to stall in performing their piece of the transition equation. They must not be allowed to pass off incremental progress—low power

transmission-- that leaves certain consumers unable to enjoy the benefits of digital technology, while consumers are forced to purchase more costly digital equipment. It is also time to give up the fiction of an 85 percent transition by the end of 2006. Having wasted most of the decade, there is simply no chance that 85 percent of consumers will have DTV-capable sets in their homes. Broadcasters must be required to provide full power digital transmission or give back the spectrum.

**IT MAKES NO SENSE TO FORCE CONSUMERS TO PAY MORE FOR LESS USEFUL DIGITAL TV SETS AND RECORDING DEVICES**

Digital TV sets and recording devices will be rendered considerably less useful than the analog equipment consumers will be forced to junk if proposals like the “broadcast flag” are implemented. A new technology that was supposed to empower consumers and enhance their experience will be turned on its head because of restrictions on the ability to record digital programming for personal use.

Today, consumers have the right to make convenient and incidental copies of copyrighted works without obtaining the prior consent of the copyright owners. These traditional “fair use” rights are at the foundation of the receipt and use of information by the public. Content protections should not encroach upon legal fair use rights and the ability of consumers to benefit from the flexibility and openness of digital technologies.

The effort to force a “broadcast flag” into all digital equipment directly contradicts the original intent of Congress in managing the transition to minimize consumer harm. The inclusion of a broadcast flag could render obsolete tens of millions of digital devices that have already been purchased. These devices would be unable to run any new material that included a flag and would be useless in short order. Forcing consumers to pay more for less hardly

seems like an attractive strategy for stimulating consumer adoption of a technology. In fact, by regulating how consumers can use the content they legally acquire, this approach to industrial policy will slow the transition and prevent the technology from reaching its potential.

### **THE FCC MUST ENSURE THAT PUBLIC INTEREST OBLIGATIONS EXPAND AS THE ROLE OF DIGITAL MEDIA EXPANDS**

If digital TV were just a luxury diversion for the rich, its potential cost might not be a source of great concern. However, television is the primary source of news and information dissemination in our country, one that consumers rely on as their primary source for gathering information. Broadband services, delivered over digital TV, hold the potential to increase the power of the TV medium by adding interactivity and much higher visual quality to the medium.

The traditional obligations that have been placed on broadcasters must be extended and expanded to apply to this new, more powerful medium. Because of the development of powerful commercial models that exploit the new capabilities of digital TV, it will take vigorous public policy intervention to ensure that digital TV serves the public interest with diverse program choices and socially relevant content and access to the means of public expression of views.

Public policy should seek to balance the powerful forces driving the commercialization of the TV industry by promoting culturally diverse programming that may not be commercially attractive but that is educational and uplifting. Public policy should seek to ensure that this new more powerful medium does not result in the abuse of political power

by those who control it and ensure that digital TV does not widen the gap between information “haves” and “have nots.”

Digital spectrum that is not currently licensed or for which investments have not actually been made to provide digital broadcast service should be immediately reclaimed by the Commission. It should be returned to the people. This spectrum should be set aside as for unlicensed used.