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FCC Ratchets Up Spectrum Re-Purposing

*Quick turn-around inquiries suggest
predetermined results*

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If the FCC's not-so-secret intentions come to fruition, we may well look back on December, 2009, as the beginning of the end of over-the-air broadcast television. Some might argue that regular old free-over-the-air broadcast TV has been on its way out for some time – although all that anguished governmental hand-wringing over the lack of DTV converter coupons less than a year ago, and the dramatic harm that that lack was expected to cause, certainly suggested that the Feds attached substantial importance to broadcast TV. What a difference a year makes! Now the FCC seems itching to sound the broadcast death knell.

In back-to-back public notices released in early December, the Commission asked for (a) “specific data on the use of spectrum currently licensed to broadcast television stations” and (b) ideas on how to encourage more video over the Internet. Why the FCC didn't simply ask “how can we migrate TV to broadband so we can give the TV spectrum to wireless?” is beyond us. After all, one of the notices referenced the November letter from the heads of CTIA – The Wireless Association and the Consumer Electronics Association urging that the Commission go on the hunt for more spectrum for wireless – with the explicit suggestion that that hunt start with TV spectrum. (So it seems that that suggestion has gotten legs at the Commission in less than a month. Most broadcasters would fall over if their pleas for Commission action were heeded with such alacrity, but we digress...)

It is generally recognized that FCC solicitations for public comment are often skewed to elicit precisely the information necessary to support the intended outcome, and to minimize the opportunities for contrarians. In the Spectrum Notice of Inquiry (*NOI*), the Commission takes that to a whole new level.

For example, it asks “What would be the impact to the U.S. economy if insufficient additional spectrum were made available for wireless broadband deployment, in terms of investments, jobs, consumer welfare, innovation, and other indicators of global

leadership?” Contrast that with the follow-up question: “What would be the impact to the U.S. economy and public welfare if the coverage of free over-the-air broadcast television was diminished to accommodate a repacking of stations to recover spectrum?”

Translation: Is fiddling with broadcast to recover spectrum for the poor wireless companies really so bad when the fate of U.S. leadership *in the world* is at stake?

The Spectrum *NOI* shows even more of the FCC’s cards when it posits that the majority of broadcast television is actually delivered to consumers via cable and satellite, not over the air. The obvious conclusion to be drawn is, gee, can’t we get by with some channel sharing? It takes the Commission three single-spaced pages of broadband-friendly questions before the Commission remembers that there might be some public interest concerns at stake. Accordingly, it perfunctorily asks what impact the assisted suicide of broadcast TV might have on such things as “public awareness of emergency information, local news, political discourse, and education?” Minor details, really. (Well, not really minor if you go back and look through the Commission’s elaborate panegyrics about Localism in the, er, Localism Proceeding. But, as Chad and Jeremy so eloquently put it, that was yesterday, and (maybe) yesterday’s gone.)

While the FCC pays lip service in the *NOI* to the notion that market-based (*i.e.*, monetary) incentives could be utilized to entice broadcasters to “reallocate” spectrum to wireless providers, the next day it invited comments on how to incentivize video manufacturers to help the commission speed things along. The Video Device Innovation inquiry rhapsodizes about the popularity of Internet video and wonders aloud how the FCC might best twist the arms of broadcasters by promoting greater migration from broadcast TV to IP-delivered TV. In fairness, the Commission seeks comments on how to best shape future device development and deployment to promote the use of a single, portable screen for *all* personal video and Internet usage. This convergence has long been touted as just around the corner – the FCC seems to be tired of waiting for the Walk sign.

Lest our cynicism suggest otherwise, we note that neither inquiry is, in and of itself, without merit. It is true that the 1996 Communications Act instructed the Commission to assess alternative uses for broadcast spectrum after the DTV transition, and there are certainly opportunities for increased spectrum efficiencies and alternative uses. Our concern lies more in the method of the FCC’s madness: as usual, the strong suspicion is that the end goal has already been determined before the means or the rationale have been established. And that in turn leads to the suspicion that the invitations for comment are simply window-dressing, empty exercises designed to create the false impression that the public may actually have the ability to influence the outcome, when that outcome has already been pre-determined.

Why are we cynical here? One example: the Commission afforded a whopping three

weeks for the preparation and submission of comments in response to the Spectrum *NOI*. That *NOI* raised vast questions of overwhelming importance, and requested extensive data which would have to be compiled, organized, analyzed and presented. And yet, would-be commenters were given *less* time to do that than the Commission routinely provides for comments on simple FM channel drop-in proposals. Are we the only ones who see a problem here?

While we do not doubt the importance of broadband deployment to all Americans, the FCC, as guardian of the public interest, convenience and necessity in *all* areas of communications, has a duty to consider the historic economic and social role of broadcast TV before the broadband horse gets too far out of the barn. Whether the Commission acknowledges and accepts that duty remains to be seen.