Making a Mess of Digital TV

by Lawrence K. Grossman

A peculiar thing happened on the way to the report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, the so-called Gore Commission (which should more accurately be called "Advisory Committee on Protecting the Financial Interest of Digital Television Broadcasters").

The majority of its members dismissed their own committee's key "broad consensus" recommendations and urged the Federal Communications Commission to require stronger and more specific public interest standards for digital TV than the "insufficient" and "ineffective" ones their committee proposed. The report's pathetically weak findings, along with the majority's critical comments, were delivered in December to Vice President Al Gore, the White House point person on telecommunications policy, and were promptly buried in the blizzard of impeachment hearings and the bombing of Iraq. A good thing, too.

The twenty-two members presidentially appointed included a TV network president; five TV station heads; cable, computer, and advertising executives; academics; and public interest representatives. Their committee came into being because, under the Telecommunications Act of 1996, all television stations will have to convert to digital transmission over the next few years, opening up a new era of broadcasting. By converting from analog to digital TV, the nation's broadcasters gain the ability to deliver crystal clear, high definition pictures and high fidelity sound on horizontal TV screens shaped like movie screens. Digital technology also gives broadcasters the option of transmitting four or five TV channels in each community instead of the single channel that each is limited to now. And digital TV makes possible the transmission of high-speed data to television sets at home, giving viewers access to the Internet, and offering e-mail and other basic interactive telecommunications services through the TV screen — in short, a host of potential new ways for broadcasters to make money.

To go digital, the nation's broadcasting companies persuaded Congress to give them an estimated seventy billion dollars worth of publicly owned airwaves free of charge, pulling off one of the biggest corporate financial coups of the century. The advisory committee was formed as an afterthought, to advise the FCC, Congress, and the administration exactly what public interest responsibilities should be required of digital TV stations, something no one in the federal government had yet bothered to think about. While the White House saw the committee as the vehicle to recommend that digital broadcasters give free TV time to candidates, the broadcasting industry, having already been handed valuable digital spectrum with no such strings attached, had absolutely no intention of giving away anything it could sell, especially TV time.

After fifteen months of what the committee's co-chairs called "'frank and full' discussions — meaning, in plain language, contentiousness and sharp differences of opinion" — the report, titled "Charting the Digital Broadcasting Future," proposed that broadcasters be required to demonstrate only "a minimum standard" of public affairs programs and public service spots, leaving it to the FCC to define what that standard should be. For three of the five broadcast industry representatives on the committee, even a "minimum standard" requirement was too much. In a separate statement of their own, they insisted that the FCC require no specific public interest obligations at all. "Voluntary self-regulation," not FCC mandates, the broadcasters argued, will take care of future public interest needs.

The non-broadcaster majority wanted the committee to propose that digital stations deliver at least three hours of local news and three hours of local educational and public affairs programs a week, but the broadcast industry members would have none of it.

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Why were the majority's views shunted to the back of the bus, as if they were in the minority, instead of being made part of the report's recommendations up front? "The broadcasters played hardball," one member said, "and threatened to walk out if we voted to recommend, as most of us wanted to, that digital TV be given major and specific public interest obligations." To avoid a politically embarrassing confrontation, the committee co-chairs, CBS president Leslie Moonves and American Enterprise Institute fellow Norman J. Ornstein, did not allow the individual members to vote their own preferences but settled instead for low-

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est common denominator, "broad consensus" proposals.

The one recommendation that the White House expected the committee to make, indeed the reason it formed the committee in the first place, was to require broadcasters to grant free TV time to political candidates. That recommendation also failed to appear in its final consensus report. Instead, digital broadcasters are asked merely to volunteer free time "for candidate-centered discourse," but only if Congress passes "comprehensive campaign finance reform." The committee urges repeal of the law requiring TV stations to charge candidates their "lowest unit rate" for campaign commercials, suggesting that in return digital broadcasters could make available two and a half hours of television time free of charge (five minutes a night for thirty days before the election), to be shared by all major candidates.

The committee's pusillanimous recommendations provoked a remarkably vitriolic dissent from its most prominent member, former FCC chairman Newton N. Minow of "vast wasteland" fame. Citing a recent Howard Stern television show featuring Stern shaving a young woman's pubic area, Minow suggested that the committee's failure to impose stronger public interest obligations would help drive digital TV down "to a level where public interest is confused with pubic interest."

While the report cites the need to "improve political discourse and invigorate democratic deliberation," it makes no mention of the need for digital TV stations to broadcast news. The only mention of news appears in the appendix, in the form of a draft voluntary code that spells out ideal "principles and aspirations" for covering elections and delivering news in the digital era. Alas, no TV station operating today would be able to meet the standards of what is actually a remarkably good model for a TV news code.

It urges every station to devote significant time to coverage of substantive election issues, as well as ballot initiatives and referendums. It proposes that stations avoid emphasizing "the sensational and the prurient," and stop giving "excessive or undue attention to sensational political or personal accusations, or to issues of 'who is ahead.'"

The draft code calls for TV's news programming to "be both substantive and well-balanced"; to pay substantial attention to both local and national issues; to avoid "morbid, sensationalistic, or alarming details . . . in connection with stories of crime or sex," and to stay away from gossip. It calls for clearly separating advertising from news, and for all commentary and analysis to be identified as such. It says that news interviewers should select what questions to ask and that the audience should be told whenever an advance agreement materially restricts important or newsworthy areas of questioning, or when an interviewee insists that questions be submitted in advance, or participates in editing the interview. It's too bad the committee's co-chairmen buried those proposed TV news standards in the report's appendix, instead of giving them a prominent place up front among the recommendations, where they belong.

In addition to recommending that the FCC impose only "minimum standards" for public affairs programming and public service spots, the committee offers a series of stale, ineffectual requirements that digital broadcasters survey their communities' needs and interests, disclose to their audience what public interest activities they do, and set voluntary standards of conduct for themselves. It recommends that digital broadcasters who implement commercial datacasting, such as stock quotes and sports stats, also transmit data for schools, such as lunch menus and snow day information, and information about public hearings and schedules of events for libraries, community organizations, governmental bodies, and public safety institutions. It proposes that stations that choose to divide their spectrum into multiple digital channels either pay a special fee, contribute one of their digital channels for public use, or make an in-kind contribution to public interest programming carried elsewhere. It also calls on stations to transmit disaster warnings, expand closed captioning and video descriptions for the blind, and encourage diversity "in programming, political discourse, hiring, promotion, and business opportunities."

THE ONLY MENTION OF NEWS APPEARS IN THE REPORT'S APPENDIX

The committee comes out strongly in favor of public television, urging Congress to create an independent trust fund to finance public broadcasting in the digital age. It recommends that the broadcast frequencies that public television now uses not be auctioned off for commercial purposes but be retained for noncommercial educational programming. (Under the Telecommunications Act of 1996, after the conversion to digital TV, all broadcasters are supposed to return the frequencies they currently use for analog television. Those frequencies will then be auctioned off by the FCC, with the money going to the U.S. Treasury.)

Add all the committee's recommendations together, however, and they do not come close to bringing a fair return to the American people for the multibillion-dollar corporate windfall in publicly owned spectrum that Congress gave away for digital TV.

Symptomatic of the advisory committee's inability to deal effectively with the major issues it was supposed to confront is its final counsel to the administration, Congress, and the FCC to "explore alternative approaches" and "consider developing a whole new model of public interest obligations" — the very job the advisory committee itself failed to do.

In 1997 I was asked if I would allow my name to be submitted for membership on the committee but I did not make the final cut. At the time, I wrote a column for these pages expressing skepticism about the committee's prospects, offering my own recommendations for what it should do, and predicting a bleak outcome for its work (CJR, September/October 1997). Too bad, that prediction turned out to be on the mark. As thirteen of the committee's own members have acknowledged, the FCC, Congress, and the administration need to see to it that the public interest will be far better served in the digital age than their own inadequate report has proposed. Given the broadcasting industry's huge campaign contributions, effective lobbying, powerful political clout, and willingness to "play hardball," the chances of that happening appear to be slim or none. ◆