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The FCC and the All-Channel Receiver Bill of 1962

After nearly a decade of pinning its hopes for an expanded television service to American homes on such concepts as good will and deintermixture, the members of the Federal Communications Commission who wished to break the vicious circle of UHF television broadcasting (no audience-no sponsors-no money for the station-no good programs-no reason for people to watch or buy receivers-no audience, etc.) decided to support the principle of using legislative methods to ensure that all new television receivers would have the capability of receiving UHF as well as VHF. This would reduce the impact of technology, and would allow stations to compete on more equal footing. This decision took several years to make, and several more years of political wrangling before it could be implemented . . . the topic of this article. Dr. Longley, who has contributed to the JOURNAL in the past, is assistant professor of government at Lawrence University in Appleton, Wisconsin.

ONE of the persistent problems facing the Federal Communications Commission throughout the 1950's and early 1960's was that of UHF television. Introduced in 1952 on an intermixed basis with already flourishing VHF television, UHF television found itself unable to compete with VHF for advertisers or audience. While the Commission, during this period, repeatedly expressed its concern with the preservation and development of UHF television, it failed to implement any reliable plan for doing so. The result was that the FCC was faced, by 1961, with a failing broadcast service. It was in the All-Channel Receiver Bill of 1962 that the means were found for the rejuvenation of UHF television.

The roots of UHF's problems go back to 1945 when the Commission allocated but 13 VHF channels (subsequently cut to 12) to serve all the needs of television. Its action rested on two assumptions: that (1) twelve VHF channels would suffice to fill TV's immediate needs, and (2) when UHF broadcasting became technically feasible later, this new service could be introduced as either a supplement to, or a replacement for, VHF television. Neither of these assumptions, however, proved to be true. UHF television, when it was finally authorized in 1952 as a supplement to existing VHF television, faced disastrous competition from established, economically secure VHF stations. This came about because the Commission, in its 1952 *Sixth Report and Order* on television allocations, rejected "all-UHF" television—nationally, or in selected areas—as being economically disastrous to existing broadcasters—conveniently forgetting its precedent for such disruption in the shift of FM radio in 1945.¹

Throughout the 1950's, the FCC spent much time dealing with the consequences of this 1952 decision. UHF broadcasting did not prove economically feasible during this period,² and the Commission involved itself in a series of controversial, inconclusive, and ultimately unsuccessful moves to remedy this situation. Among these were:

1. The consideration and rejection, in 1954, of proposals for the deintermixture of seven markets currently assigned VHF television—these to be made all UHF,
2. the reconsideration, in March of 1955, of five of these rejections,
3. the decision, in November of that year, not to undertake deintermixture in these five cases—or in any of the 30 other proceedings which meanwhile had been initiated,
4. the statement, on January 20, 1956, that deintermixture was, of course, a very real possibility and that the FCC was still considering it,
5. the announcement, on June 25, 1956, of plans to deintermix 13 markets (including the five twice rejected earlier).
6. The failure, during the period from 1956 to the 1960's, to implement deintermixture in even the majority of these 13 cases. Only five of the 13 deintermixtures proposed in 1956 actually were carried out, and these did little to help the UHF industry generally. It is likely, moreover, that the lengthy debates and disputes over UHF during the 1950's served more to point out its sickness to advertisers and viewers than to relieve its problems.

By 1961 and 1962, the condition of UHF had deteriorated to such an extent that some new initiative seemed required. The production

of all-channel television sets, capable of receiving UHF as well as VHF channels, had fallen to a record low of 5.5% of all new sets, thus giving the 83 commercial UHF stations marginally on the air little hope of being able to increase their already tiny audiences.³ Lack of audiences made UHF television unattractive to advertisers, while the lack of advertising revenue spelled bankruptcy and an end of operations to the UHF broadcaster. These conditions were of great concern to the "New Frontier"-inspired FCC, and especially to its new chairman, Newton M. Minow, who had been outspoken about "the vast wasteland" of television and the need to counter TV's mediocrity through the development of additional channels offering further program variety and diversity—channels which could come only through an unprecedented utilization of the UHF band.⁴

As a result of these concerns and hopes for the future of UHF television, the Commission announced, on July 27, 1961, a package proposal including such varied items as: (1) deintermixture of UHF and VHF markets in eight areas,⁵ (2) a "shoehorning" in of new VHF assignments at less than the standard mileage separation in eight other cities, and (3) a request for Congressional action on legislation authorizing the FCC to require that all new sets be capable of receiving both VHF and UHF television.⁶ If this combination of plans seems bulky and somewhat contradictory, it was because on specific proposals such as that calling for efforts at deintermixture, the Commissioners were split 4-3, and only by combining several such items was the Commission able to obtain a final unanimous vote on the package.⁷ The FCC was, however, unanimous in deciding to request all-channel television receiver legislation.⁸

The two most important elements of the 1961 package were the proposals for deintermixture, and the request for all-channel television legislation.⁹ In conjunction, they gave rise to considerable fear that the FCC was moving toward an all-UHF television system. As Dr. Frank Stanton of CBS put it, "I get nervous when the Commission talks about deintermixture at the same time it talks about all-channel sets."¹⁰ Chairman Minow tried to calm such fears by pointing out that only one Commissioner (Robert E. Lee) currently favored a shift of all television to UHF¹¹—a possibility which later was seen even by Commissioner Lee as "an exercise in futility."¹²

While the combination of deintermixture and all-channel television made broadcasters nervous, deintermixture by itself distinctly upset them. Unlike deintermixture proposals made in 1955 and 1956 which would, in most cases, have changed only VHF assignments unfilled, as of 1956, the Commission was now suggesting moving VHF stations already on the air to the UHF band. Commissioner Robert E. Lee described this difference: "It's one thing to tell people they can't have something, it's another thing to take away something they have."¹³ In an editorial on the new deintermixture proposals, *Broadcasting* warned:

There was a time—before the new VHF stations were built in single station markets—when deintermixture would have been workable with minimal injury to the public and broadcasters. Any change now may be a major wrench and we have the notion that the public will make itself heard.¹⁴

All eight members of the Congressional delegation for the State of Connecticut, for example, united in opposition to the proposal to shift Hartford's only VHF station to the UHF band.¹⁵ By early 1962, *Broadcasting* was able to report cheerfully that: "Almost all Senators in states with markets slated for deintermixture and Congressmen from districts containing those stations and others have expressed their opposition to the plan."¹⁶ Those industry groups opposed to deintermixture were to make good use of this Congressionally articulated concern over deintermixture plans.

During much of 1961, while controversy developed deintermixture, little action occurred on all-channel television legislation. However, in late September, 1961, FCC Chairman Minow suggested that such a bill might resolve many of the same problems as deintermixture.¹⁷ On January 11, 1962, Minow further emphasized the all-channel television bill by calling it "our chief legislative proposal of 1962."¹⁸

Legislation designed to grant the Commission the desired all-channel authority was pending in Congress at this point in the form of Senate Bill 2109, introduced by Senator John Pastore of Rhode Island, and House Bill 8031, introduced by Representative Oren Harris of Arkansas, chairmen of the Senate and House Commerce Committees. Both of these bills granted the FCC authority to make rules requiring that all television sets shipped in interstate commerce have the capacity to

receive all channels—UHF as well as VHF—allotted to television. Hearings on this FCC-supported legislation were held by the Senate Commerce Committee on February 20, 21, and 22, 1962,¹⁹ and by the House Commerce Committee on March 5, 6, 7, and 9, 1962.²⁰ Much of the testimony at these hearings, however, revolved around the topic of deintermixture rather than all-channel television. Many bills had been introduced to halt deintermixture, and strong sentiment seemed to exist in both Commerce Committees for a rider to any all-channel television bill which would specifically prohibit changes in existing VHF assignments designed to achieve the deintermixture of television markets. As *Broadcasting* jubilantly concluded, "It was made clear in both the Senate and House Committee proceedings that there will be no all-channel bill without a commitment to forego deintermixture now."²¹

Faced with such a dilemma, the FCC sought to head off a legislative prohibition through testifying that any statutory moratorium on deintermixture proceedings would be unfortunate since it would deny the Commission needed flexibility, and that "unless Congress wants to go into the frequency allocation business, we should be left free to make such decisions."²² It soon became clear, however, that *Broadcasting* was correct in that unless the FCC gave up completely on its deintermixture plans, any all-channel receiver legislation which might pass—if any—would be certain to contain statutory language prohibiting further deintermixture proceedings. Consequently, the Commission, on March 16, sent House Committee on Interstate and Foreign Commerce Chairman Harris a letter stating:

... if the all-channel receiver television legislation is enacted by this Congress, it is the judgment of the Commission . . . that it would be inappropriate, in the light of this important new development to proceed with the eight deintermixture proceedings initiated on July 27, 1961, and that, on the contrary, a sufficient period of time should be allowed to indicate whether the all-channel receiver authority would in fact achieve the Commission's overall allocations goals. . . . Before undertaking the implementation of any policy concerning deintermixture, the Commission would advise the Committee of its plans and give it an appropriate period of time to consider the Commission's proposals.²³

The result of this letter was, in the words of Commissioner Robert E. Lee, "Congress in effect made a deal with the Commission—drop

deintermixture, and we get the all-channel television bill."²⁴ Legislative support for the bill quickly picked up, and *Broadcasting* reported that "Representative Harris was assisted in his support of the bill by a number of his committee members representing districts threatened by the Commission's deintermixture proposal."²⁵ Another observer of this legislation concluded that "...since the strong VHF interests prefer an all-channel bill over deintermixture, the bill has a strong chance of passing."²⁶ The linking of deintermixture and all-channel television in the original 1961 package, then, had an unforeseen but important result—it greatly enhanced the prospects of the all-channel television bill in 1962. One key individual, Commissioner Lee, put it rather simply: the decision to propose deintermixture, and the resulting opposition to this plan, was "the reason we got the all-channel television legislation."²⁷

Now supported by those opposing deintermixture, the all-channel television bill faced comparatively little opposition. Some Congressmen expressed reservations about the "loss of freedom" involved in requiring people to purchase television sets equipped in a certain way, and vocal, but isolated concern was expressed by the Electronic Industries Association about the rise in set costs—variously estimated as \$25-\$40 retail—that would result from having to include a UHF tuner in each set.²⁸ This opposition, however, was minor compared with the massive industry support for the bill coming from all three networks, major manufacturers such as General Electric and RCA (despite the Electronic Industries Association stand), several industry groups including the National Association of Broadcasters,²⁹ as well as from President Kennedy (on March 14, 1962).

Favorably reported out of the House Committee on Interstate and Foreign Commerce on April 9,³⁰ the bill passed the House by a vote of 279-90 on May 2. The Senate version was favorably reported by the Senate Commerce Committee on May 24,³¹ and was approved by the Senate by a voice vote on June 14. Minor differences between the Senate and House bills were agreed to by the House by a voice vote on June 29, and on July 10, 1962, President Kennedy signed the legislation as Public Law 87-529. As the last stage in this process, the FCC availed itself of its newly conferred authority on September 13, 1962, to institute rule-making to require that all television sets shipped in interstate commerce be all-channel television receivers.³² This rule

was made final on November 23, 1962,³³ to go into effect April 30, 1964.

One of the strange things about the all-channel television law of 1962 was that no one seemed to realize how *well* this plan would work. Because of the boom in portable TV sets and the great growth in color TV sales, the proportion of all-channel receivers in American homes increased more quickly than anticipated.³⁴ In its Annual Report for 1967, the FCC reported 42.1% of all U.S. television sets as able to receive both UHF and VHF television,³⁵ and predictions project this level to 90% by the end of 1970.³⁶ The result of the general ability to receive UHF stations, coupled with new technical advances in UHF transmitters, antennas, and tuners, may then make the traditional distinction between UHF and VHF television virtually obsolete.³⁷

The politics of this controversy were rather curious, for it can be said that deintermixture was the reason that the all-channel receiver bill passed in 1962. The opposition to deintermixture was particularly strong, since in every area considered for deintermixture VHF stations already on the air would have been affected. This opposition to deintermixture was transformed, as time went by, into positive support for an alternative policy—the all-channel receiver bill. The linking of a highly unpopular measure to a proposal VHF interests could accept resulted in sufficient support accumulating for the all-channel receiver bill so as to ensure its enactment by Congress and its implementation by the Commission. This controversy shows an interesting converging of the interests of the industry in avoiding a certain type of policy, with the renewed interest of the Commission in providing for diversity and additional competition in TV broadcasting. The result was a pattern of pressures favoring the all-channel receiver bill sufficient to ensure its adoption as definitive public policy.

The initiation of the request for action along the lines of the all-channel receiver bill came from the Commission itself—although, as earlier stated, the idea of such legislation derived from a suggestion contained in the 1957 House Judiciary Committee report.³⁸ The reason for this initiative was that the FCC, involved in berating the television industry's "vast wasteland," was taking a renewed interest in UHF television as a means of broadening program choice for the viewer. In

addition, the FCC had been under pressure from the Senate Commerce Committee for more than five years to find some means of alleviating UHF's woes. The result of this Commission interest and Congressional pressure was the package of proposals of July 27, 1961. The subsequent focus on all-channel legislation as the chief means of UHF development, however, came about largely because it alone, of the various proposals, did not face immediate overwhelming opposition.

The opposition to deintermixture arose from self-interest on the part of VHF interests, and constituency interests (and thus political self-interest) on the part of Congressmen. In terms of the all-channel bill, however, involvement was determined for participants (save for the Commission and the Electronic Industries Association itself which was concerned about set sales after a rise in prices) by a desire to use the legislation as a means of permanently ending the specter of deintermixture.

Unlike the endless deintermixture controversies of the 1950's, the UHF operators and the Commission were successful in 1962, in implementing a policy to assist UHF television. The victory for the FCC in successfully obtaining Congressional support for all-channel set requirements, may well have been particularly sweet, since to get it the only thing the Commission had to give up was a proposal limited in applicability and backed only by a slim majority of the Commission. In return, the FCC received authority to implement a policy which had favorable results beyond all expectations. In this sense, those UHF investors and operators which had so long suffered financially "really won," for in the successful FCC initiative to obtain the manufacture and sale of all-channel sets, the means were found for the realization of UHF television.

Footnotes

¹See: Lawrence D. Longley, "The FM Shift in 1945," JOURNAL OF BROADCASTING, XII (Fall, 1968), 353-365.

²See: Harvey J. Levin, "Economic Structure and the Regulation of Television," *Quarterly Journal of Economics*, LXXII (Aug., 1958), 424-450. A valuable analysis of the linkage between audience size, advertising revenue, program quality, and UHF set conversions is provided in the Plotkin report to the Senate Commerce Committee in 1955: U. S. Senate, Committee on Interstate and Foreign Commerce, *Television Network Regulation and the UHF Problem*, 84th Congress, First Session, 1955.

³"Statistical Analysis, 1946—63: The Television Industry"; table titled "The UHF Story," *TV Factbook No. 34 for 1964*, p. 38a. It should be noted that this all-channel receiver production figure of 5.5% is a national average, and in some areas, such as central Illinois or central Massachusetts, where major network service was provided largely or entirely by UHF stations, the all-channel set "penetration rate" was much higher — possibly even 65 or 70%. These areas, however, were much outnumbered by markets where all network service was supplied by VHF stations, and UHF stations, if they existed at all, had but second rate programs to broadcast to an audience largely unequipped to receive UHF transmission. Prior to late-1952, all sets were VHF only. In 1953, slightly more than 20% of TV sets manufactured were equipped for UHF; this proportion dropped each year until the effects of the 1962 law were felt.

⁴"Notes: The Darkened Channels: UHF Television and the F.C.C." *Harvard Law Review*, LXXV (June, 1962), p. 1578. See Chapter VI, "All-Channel Television," in Newton N. Minow, *Equal Time: The Private Broadcaster and the Public Interest* (New York: Atheneum, 1964), pp. 132-145.

⁵This was essentially a renewal of an approach attempted — unsuccessfully — in the 1950's. The deintermixure of markets would involve "... a reallocation of channel assignments so that any one community will be either all VHF or all UHF; no single community would have both UHF and VHF stations." Dr. Frank Stanton, President of CBS, at the 1954 Potter Hearings, United States Senate, Committee on Interstate and Foreign Commerce, *Hearings on the Status of UHF and Multiple Ownership of TV Stations*, 83rd Congress, Second Session, May and June, 1954, p. 978.

⁶FCC Public Notice: "Comprehensive Actions to Foster Expansion of UHF T.V. Broadcasting," July 28, 1961 (mimeo). See also *Broadcasting*, August 7, 1961, p. 54. Kittross observes concerning the Commission request for authorizing legislation: "There is some precedent for the view that the FCC had the power all the time, via asking the FTC to act along the lines of: 'It is fraudulent to sell any receiver in interstate commerce that cannot pick up all channels of a given service....' Another approach is the one used in 1910. The problem was the failure (by order of their company) of the Marconi Company operators to communicate with ships/shore stations that used equipment of other manufacturers. This was against public policy. The U. S. enforced an international agreement against the Marconi practice by writing into the Radio Act of 1910 that all ships of certain classes leaving U. S. ports had to be 'equipped with an efficient apparatus for radio-communication' and that 'for the purpose of this act apparatus for radio-communication shall not be deemed to be efficient unless the company installing it shall contract [it] in writing to exchange, and shall, in fact, exchange, as far as may be physically practicable, to be determined by the master of the vessel, messages with shore or ship stations using other systems of radio-communication.' A very interesting use of a 'technical' requirement to accomplish a 'social' purpose." Personal letter to author from John M. Kittross, February 2, 1968.

⁷Washington interviews with FCC Commissioner Robert E. Lee, October 25, 1965, and Phil Cross, legal assistant to Commissioner Robert T. Bartley, October 25, 1965.

⁸United States Senate, Committee on Interstate and Foreign Commerce, *Hearings on All-Channel Television Receivers*, 87th Congress, Second Session, February 20, 21, and 22, 1962, p. 31. This idea of dealing with UHF problems through attacking the low level of all-channel receiver penetration was

not new in 1961. As early as 1957, Congressman Emanuel Celler had suggested that the heart of the problem lay in the limited sales of sets with UHF receiving capacities, (United States House of Representatives Committee on the Judiciary. *Report of the Antitrust Subcommittee Pursuant to House Resolution 107 on The Television Broadcasting Industry* 85th Congress, First Session, March 13, 1957, p. 9.), and proposals had been made during the 1950's for some type of legislative requirement that all new television sets be capable of receiving both UHF and VHF channels, but nothing had come of this.

⁹The FCC dropped its proposal for new "drop-in" VHF assignments after the passage of the all-channel television bill on the grounds that the effects of the new legislation should first be determined. This was greatly regretted by the Senate Commerce Committee, which had backed VHF "drop-ins" as a means of strengthening TV network competition through increasing the number of cities with three VHF stations. The proposal, however, was strongly opposed by established VHF licensees whose broadcast signal would be degraded by "short-spaced" stations transmitting on the same channel. Interviews with Nicholas Zapple, Counsel of Senate Commerce Committee, October 21, 1965, and Commissioner Robert E. Lee, October 25, 1965.

¹⁰*Broadcasting*, March 12, 1962, p. 40.

¹¹*Ibid.*

¹²Washington interview with Commissioner Robert E. Lee, October 25, 1965.

¹³Washington interview with Commissioner Robert E. Lee, October 25, 1965.

¹⁴Editorial in *Broadcasting*, August 7, 1961, p. 114.

¹⁵*Broadcasting*, August 21, 1961, p. 50

¹⁶*Broadcasting*, February 26, 1962, p. 56.

¹⁷*Broadcasting*, October 2, 1961, p. 4.

¹⁸This speech to the National Press Club on January 11, 1962, can be found in Newton N. Minow, *op. cit.*, Chapter VI.

¹⁹U. S. Senate, Committee on Interstate and Foreign Commerce. *Hearings on All-Channel Television Receivers*, *op. cit.*

²⁰United States House of Representatives, Committee on Interstate and Foreign Commerce, *Hearings on All-Channel Television Receivers and Deintermixture*, 87th Congress, Second Session, March 5, 6, 7, and 9, 1962.

²¹Editorial in *Broadcasting*, March 12, 1962, p. 106.

²²*Broadcasting*, February 26, 1962, p. 100.

²³United States House of Representatives, Committee on Interstate and Foreign Commerce. *All-Channel Television Receivers*, House Report No. 1559, 87th Congress, Second Session, April 9, 1962, pp. 19-20. The complete text of the letter can be found on pp. 18-21 of this report. The deintermixture proceedings were officially terminated on September 12, 1962.

²⁴Washington interview with Commissioner Robert E. Lee, October 25, 1965. One might ask why Congress and the broadcasting industry felt a "deal" was necessary — why wasn't, for example, a prohibition of deintermixture considered in the absence of an All-Channel Receiver Bill? The issue seems to be that the events of recent years (including the quiz-show scandals, reports of improper industry-Commission contacts, and the general stir over FCC Chairman Minow's criticisms of television) had put the broadcasting industry, and its Congressional allies, on the spot. A purely negative response to the problems of UHF television, and the Commission's attempts to alleviate them, then, seemed untenable.

²⁵*Broadcasting*, May 7, 1962, p. 54.

²⁶"Notes: The Darkened Channels: UHF Television and the F.C.C.," *op. cit.*, p. 1602.