



Regulatory Review

A FAIR TRANSITION TO DIGITAL

By Gerry Oberst

The European Commission earlier this year adopted the goal of encouraging member states to achieve the transition from analog to digital television by 2012. The Commission seeks to help expedite the process while avoiding anti-competitive effects or favoring one platform over another. Because satellite digital broadcasting is a major success in Europe, the entire satellite industry has a stake in an efficient transition that avoids unfair subsidies of terrestrial platforms for digital television.



As part of the Commission's efforts, it sponsored a study earlier this year to assess public policy treatment of digital terrestrial television (DTT). The study reviews what European countries have done so far for DTT and seeks to identify success factors — including how much the traditional focus on terrestrial platforms must be maintained and how much content is required on those platforms in the public interest.

This author provided legal input in the study, which was finalized in late August and scheduled to be discussed further at a public Brussels workshop last month.

In member states where no single transmission platform dominates, a multi-platform approach may be adopted, with various platforms collectively providing full digital television coverage. The platforms differ from each other, both qualitatively as well as in terms of costs. This will affect the choice of platform by broadcasters, including European public broadcasters with obligations for near-universal coverage.

The study recognizes that, from a network cost perspective, satellite represents the only real alternative to terrestrial networks for cover-

age of non-urban areas, thus ensuring nationwide public service coverage. For medium to large countries, such coverage is both easier and cheaper (per household covered) via satellite. Transmission on satellite platforms may also enable more content to be broadcast than DTT, which is constrained by the spectrum available. The study reviews in more detail the economic comparison between DTH and DTT across a range of variables.

No one pattern will be adopted in all European countries. Some may opt for satellite to provide coverage in non-urban areas, with urban areas served by multiple transmission platforms. Equally, DTT, despite its capacity limitation, may represent an appropriate platform in some countries for full digital television coverage.

Regulatory decisions have had a significant impact on the outcome of DTT projects. Early DTT ventures suffered when governments mandated business models and imposed high-coverage obligations together with technical specifications leading to expensive set top boxes. In general, the latest regulatory developments in the EU have addressed the shortcomings of the first DTT ventures in Europe and are leaving more flexibility to industry to choose business models and service patterns.

Out of respect for "technology neutrality," existing European law generally does not apply different standards to terrestrial than to satellite television. Competition law also provides limits on subsidies that may be provided to a specific transmission network. However, for services that are deemed to be in the general economic interest, EU law permits some degree of policy intervention that might otherwise be inconsistent with competition rules.

Public subsidies have historically been widely used in analog television broadcasting. Extending these approaches into the digital environment, in light of substantial changes in markets and technologies, requires new justifications and not mere legacy regulation from

the analog environment. Thus, new questions must be answered, and the study recommends areas where the European Commission could add greater clarity to existing legal standards, to avoid problems in the transition.

In addition to legal and regulatory issues, the DTT study examined developments in digital television technology, including advances in high-definition television (HDTV), mobile broadcast television (DVB-H) and advanced video coding (AVC).

For example, it concludes that although HDTV is suitable for distribution via all delivery platforms, satellite and cable platforms have certain advantages. Satellite-delivered HDTV programming is already available in Europe, and satellite and cable are likely to see several more European HDTV launches in the near future.

By increasing demand for digital television (via various platforms), these new technologies will contribute toward achieving the switch-over target of 2012 across Europe.

The study concludes that the European Commission can make further substantial contributions to assist development of digital television. For example, providing greater clarity in European law on market definitions used for regulations and in must carry and spectrum management will help member states accelerate their plans for digital migration.

Although the European goal of 2012 provides a challenging target, especially given that many European countries have not yet developed their transition strategies, further guidance from the Commission on the above issues will help member states in meeting this deadline, while avoiding prejudice to the already digital satellite industry. ❖

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