

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations

MB Docket No. 03-185

**JOINT COMMENTS OF CORRIDOR TELEVISION, LLP AND RAPID
BROADCASTING COMPANY**

These comments are filed in response to the Commission's *Notice of Proposed Rule Making*¹ in the captioned proceeding on behalf of Corridor Television, LLP, licensee of full power television station KBEJ(TV), Fredericksburg, Texas; and Rapid Broadcasting Company, licensee of full power television station KNBN(TV), Rapid City, South Dakota (collectively, the "Stations"), neither of which has a paired digital television ("DTV") allotment.² Specifically, these comments address the merits of the Commission's proposal to open a "digital-only application filing window limited to incumbent LPTV, TV translator, and Class A TV licensees and permittees."³ It should be self-evident that any "digital-only application filing window"

¹ *In re Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Notice of Proposed Rule Making, MB Docket No. 03-185 (rel. Aug. 29, 2003) ("*NPRM*").

² Rapid Broadcasting is also the licensee of KWSD(TV) in Sioux Falls, South Dakota, which has a paired DTV allotment.

³ *NPRM* ¶ 107.

opened by the Commission should give first priority to full power TV stations that do not have paired DTV allotments.

Background

The Commission has often made reference to the DTV transition as a top priority.⁴ FCC rules have been written to “prioritize those elements most important to further progress in the DTV transition.”⁵ In awarding initial paired DTV licenses to full power broadcast stations, the Commission’s stated goal was one of “full accommodation.”⁶ In considering initial eligibility, the Commission “determined that there is insufficient spectrum to include LPTV stations and translators, which are secondary under our rules and policies, to be initially eligible for a DTV channel.”⁷ Indeed, the Commission contemplated requiring “a significant number of low power TV (LPTV) stations and TV translator stations to make changes in their operation, including the possibility of ceasing operation.”⁸

⁴ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, MM Docket No. 87-268, 112 FCC Rcd. 12809 ¶ 5 (1997) (“*Fifth Report and Order*”) (stating that the Commission’s “first” goal is “to promote and preserve free, universally available, local broadcast television in a digital world.”). In August 2002, FCC Chairman Michael Powell called the DTV transition a “national commitment[] in which the FCC must play a prominent role.” *In re Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, MM Docket No. 00-39, 17 FCC Rcd 15978 at 16020 (2002) (Separate Statement of Chairman Michael K. Powell).

⁵ *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rule Making, MB Docket No. 03-15, 18 FCC Rcd. 1279 ¶5 (2003).

⁶ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, MM Docket No. 03-15, 12 FCC Rcd 14588 ¶11 (1997) (“*Sixth Report and Order*”) (“We continue to believe that our primary allotment objective should be to develop a DTV Table that provides a channel for all eligible broadcasters.”)

⁷ *Fifth Report & Order* ¶18.

⁸ Id. ¶¶ 6, 11 (“We disagree with those parties that suggest we provide allotments for fewer than all full service licensees in order to avoid the displacement of low power TV stations.”)

The lack of spectrum availability led the Commission to use an eligibility cut-off date for full power stations.⁹ As the Commission notes in footnote 164 of the *NPRM*, initial DTV licenses were awarded to “full-service broadcasters” that held an analog station license or construction permit as of April 3, 1997, the adoption date of the Commission’s *Fifth and Sixth Reports and Orders*.¹⁰ The commenting full power Stations did not qualify for paired DTV allotments because their construction permits were issued after that date.¹¹ In the case of KBEJ, its application was filed in 1987, which should qualify it for the “particular consideration” applicable to licensees who applied prior to October 24, 1991, but whose construction permits were issued after the eligibility cut-off date.¹²

Yet, without regard to the Commission’s goal of “full accommodation,” or to the acknowledged priority of full-service, full power stations, or even to the promised “particular consideration” applicable to stations for which applications were filed prior to 1991, the Commission surprisingly proposes to open a DTV filing window applicable *only* to low power TV stations, leaving full power stations without paired allotments in the dark...literally.

⁹ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry, MM Docket No. 87-268, 10 FCC Rcd 10540 ¶27 (1995) (“[I]nitial eligibility should be limited to existing broadcasters given the shortage of suitable spectrum and our decision not to allocate additional spectrum for this purpose.”). This decision was later codified by Congress in Section 336 of the Telecommunications Act of 1996, 47 USC §336(a)(1) (the “1996 Act”).

¹⁰ See 47 C.F.R. § 73.622(a).

¹¹ The construction permit for KBEJ was issued December 19, 1997 (just seven months after the cut-off date) and the construction permit for KNBN was issued April 11, 2000.

¹² See Fifth Report and Order ¶ 18 n.26. The Commission felt it owed “particular consideration” to those stations, such as KBEJ, for which paired DTV allotments were originally proposed but then withdrawn following the 1996 Act.

I. The Commission Should Give Priority to Full Power Stations in Allowing New Applications for Digital Licenses

The Commission acknowledges that “[s]tat[ions] in the low power television service are authorized with ‘secondary’ frequency use status. These stations may not cause interference to, and must accept interference from, full-service television stations”¹³ Also acknowledged is the fact that “low power television service stations have lower authorized power levels than full-service TV stations” and that they “serve much smaller geographic regions than full-service stations.”¹⁴

In this regard, the Commission has long held that “[I]t is our firm intention that low power stations remain secondary, in terms of spectrum priority.”¹⁵ While recognizing that LPTV stations “provide needed and meaningful service, we point out that the coverage obligations to which we subject full service stations specifically are designed to ensure maximum service to the public, beyond what we shall require of low power. This fact, constrains us to ensure the continued primacy of full service stations by emphasizing the secondary status of low power stations.”¹⁶

In view of the Commission’s goal to provide “full accommodation” to further the DTV transition, coupled with the acknowledged secondary status of low power stations, it must be concluded that the Commission’s failure to account for full power stations that do not have a paired allotment in its current proposal to open a DTV filing window for low power stations only

¹³ *NPRM* ¶ 3.

¹⁴ *Id.* ¶¶ 3, 4.

¹⁵ *An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, Report and Order, 51 RR 2d 476, ¶ 24 (1982).

¹⁶ *Id.*

must be an oversight. The rationale advanced by the Commission for the incumbent-only DTV filing window is that a “digital-only filing window with restricted eligibility would help existing station operators obtain channels on which to begin digital service offerings, thereby minimizing the disruption that could be caused by the earlier than desired cessation of analog service.”¹⁷ This rationale applies with even more force to full-service broadcast stations that lack paired DTV channels than it does to low power stations.

Even more surprising, the Commission is not proposing to limit the number of DTV applications that can be filed by any incumbent LPTV licensee.¹⁸ Thus, an LPTV licensee could theoretically obtain multiple DTV channels from a filing window that is off limits to full power stations with *no* DTV facilities!

Undoubtedly, Class A stations have some of the attributes of full power stations, such as being subject to the same Part 73 content regulations. On the other hand, Class A stations are subject to the maximum power levels applicable to LPTV stations and they are exempt from the principal city coverage requirements applicable to full power stations.¹⁹ In its decision *not* to award paired DTV licenses to Class A stations, the Commission stated, “we must exercise restraint with respect to issuing additional DTV licenses in order to preserve spectrum to accommodate needs associated with the transition of full-service stations to digital service.”²⁰

Indeed, in holding that Section 336 of the Communications Act does not pertain to Class A

¹⁷ *NPRM* ¶ 99.

¹⁸ *See NPRM* ¶ 107.

¹⁹ *In re Establishment of a Class A Television Service*, Report and Order, MM Docket No. 00-10, 15 FCC Rcd 6355 ¶¶ 28-29 (2000).

²⁰ *In re Establishment of a Class A Television Service*, Memorandum Opinion and Order on Reconsideration, MM Docket No. 00-10, 16 FCC Rcd 8244 ¶ 83 (2001) (“*Class A Reconsideration Order*”). Rather, Class A stations were advised that they could “convert their existing channel to digital broadcasting at any time,” (Id. ¶81), putting them in the same category as full-service stations without paired allotments.

stations, the Commission noted, “interpreting the statute to require mandatory authorization of a paired digital channel for DTV for a Class A station could create an unfair advantage for Class A stations over certain full service stations ... [that] do not have a paired channel.”²¹ The Commission now proposes to create the same unfair advantage it sought to avoid.

The commenting full-service Stations demand to know what has changed. Even if Class A stations were put on an *equal* footing with full power stations, it would not explain why the proposed DTV filing window makes no accommodation for full-service stations that have no paired DTV allotment. It also would not explain why non-Class A LPTV stations and TV translators are being given an opportunity to obtain DTV channels that is not being made available to full-service stations that have no paired DTV allotment.

The more logical approach would be to open an initial filing window for those full-service stations that have no paired DTV allotment, in which they could file petitions for rulemaking for paired DTV allotments. This window would be open prior to a window allowing Class A, LPTV and TV translators to obtain DTV facilities. That way, any application filed during the subsequent low power filing window could protect the proposed full power DTV allotments. Any full-service station without a paired allotment that is unable to find an available paired frequency should be allowed to participate in the proposed low power filing window, as explained below.

²¹ *Id.* ¶ 81.

II. Alternatively, Full-Service Stations That Do Not Have Paired DTV Allotments Should Be Permitted to Apply For Low Power DTV Licenses

We are well aware that the Commission's DTV transition has been complicated by a shortage of spectrum availability.²² It may well be the case that there are no paired DTV allotments possible within the service areas of the Stations, or within the service areas of other full-service stations that lack paired allotments. If this should be the case, or if the Commission otherwise decides that it is inappropriate to allow such stations to obtain paired DTV allotments, the Commission should permit such stations to participate in the proposed filing window for (unallotted) low power DTV channels. This would give full-service stations the same flexibility to deal with the transition as the Commission proposes to give Class A, LPTV stations and TV translators. They would be able to begin a DTV service while retaining analog service for those viewers who do not have digital viewing capability. Perhaps the full-service stations could move their analog service to the low power station to serve those viewers while converting their full power station to digital. This would undoubtedly encourage those full power stations to transition to DTV sooner rather than later, since the conversion would no longer require shutting off analog viewers. It would thereby further all of the Commission's stated goals with regard to the DTV transition.

The Commission must admit, as it has done all along (until now), that the DTV transition is of higher priority for full power, full-service stations than it is for low power TV stations.

Assuming that to be the case, the Commission must, at the very least, allow full power stations

²² Spectrum considerations played a major role in both the Commission's decision to allot paired digital channels to full power stations that were licensed or that had not been granted construction permits as of April 3, 1997 (*see Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Order, MM Docket No. 87-268, 14 FCC Rcd. 1348 ¶¶ 15, 16 (1998)) and to exclude LPTV and TV translator stations from that initial eligibility. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Second Report and Order, MM Docket No. 87-268, 7 FCC Rcd. 3340 ¶ 42 (1992).

without paired DTV allotments to participate in the proposed LPTV filing window, so as to give them the same flexibility and encouragement to convert to DTV status as it envisions giving to low power stations, even if it means giving full power stations a paired *low* power channel to further that goal. That would be better than nothing, which is what the commenting full-service Stations have now.

CONCLUSION

The Commission's proposal to open a DTV filing window limited exclusively to LPTV, TV translators and Class A licensees and permittees ignores the Commission's oft-stated objective of furthering the digital transition first among full power, full-service television stations. Those full-service stations that did not qualify for initial paired DTV allotments would be at a *disadvantage* vis-à-vis low power stations if the Commission does not first permit these stations to obtain paired allotments or, alternatively, to participate in the proposed filing window for low power DTV stations.

The commenting Stations firmly believe that the failure of this rulemaking proposal to account for them and similarly situated full-service stations is an oversight and firmly hope that the Commission will rectify it prior to finalizing this proposal.

Respectfully submitted,

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November 25, 2003

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