

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Amendment of Parts 73 and 74 of the)	
Commission's Rules To Establish Rules for)	MB Docket No. 03-185
Digital Low Power Television, Television)	
Translator, and Television Booster Stations)	
and To Amend Rules for Digital Class A)	
Television Stations)	

To: The Commission

COMMENTS OF THE BRUNO GOODWORTH NETWORK INC.

1. The Bruno Goodworth Network Inc. (WBGN-TV) hereby submits its comments in response to the Commission's Notice of Proposed Rule Making (Notice) in the above-captioned proceeding.¹ "WBGN-TV" is the business name used by eleven Class A and Class Qualified stations operating in and around the Pittsburgh, PA region.² WBGN-TV thanks the Commission for its careful and detailed work in the Notice.

2. WBGN-TV has vast experience operating and maintaining LPTV and Class A stations. Our experience and tireless effort to make the LPTV and Class A service valuable to our community and the general public is virtually unmatched in the industry. WBGN-TV began building its LPTV stations in 1994 and today has combined coverage of over 1,050,000 homes.

¹ FCC 03-198, released August 29, 2003 and published at 68 FR55566 (September 26, 2003).

² Some of the Class A qualified stations do not yet have Class A licenses because they operate on out-of-core channels and have not yet been able to find in-core channels to which they can move.

National syndicators, regional producers and local political leaders rely on WBGH-TV for their “local” television service in our market.

3. Our comments will attempt to explain how the LPTV and Class A businesses operate differently from cable and full power stations and how LPTV and Class A stations have been severely suppressed over the last 20 years. We will attempt to dispel the notion that there is currently any remote comparison between LPTV/Class A stations and full power stations and the “television viewer perceptions” that are associated with them. We will show in detail why there are three critical areas where the Commission absolutely must respond to the needs of LPTV and Class A stations if the Commission intends for these services to survive in the DTV age.

4. The three critical areas that must be addressed are as follows: (a) The designation of primary status for ALL LPTV and Class A stations is overwhelmingly essential for the service to survive and for this Notice to even get past a rulemaking without Congressional intervention which could be initiated by WBGH-TV and overwhelmingly supported by the LPTV/Class A industry and the public. (b) LPTV/Class A stations must have maximum flexibility in technical standards to provide any new digital services, including but not limited to current two way communication data services, along with any wonderful new services that we may be able to develop in the future. (c) We need the ability to use the entire LPTV/Class A 6 MHz signal for subscription digital services in the event cable operators, satellite providers, broadband electric utility providers, wireless cable operators, broadband internet providers and Video-on-Demand companies refuse to carry LPTV/Class A services in their basic programming line-ups.

5. PRIMARY STATUS: Any LPTV or Class A television station that applies for and gets a permit to build a DTV channel should be granted primary status upon the

Commission's granting of a "license to cover" that DTV station. In 1978 when the creation of the LPTV service was first being discussed, full power stations affiliated with the CBS, NBC and ABC networks dominated the television spectrum. The thought of allowing new competitors into the spectrum and to compete for television advertising dollars horrified these network stations. In 1982, the successful lobbying efforts of the National Association of Broadcasters ("NAB") and others who represented these network stations successfully limited the new LPTV to a paltry and dismal limited coverage television service. LPTV at its inception was destined to become a total and complete failure because of its lack of ability to cover a full market given all the power restrictions. The Commission finally granted LPTV licenses but bowed to the pressure from NAB and the other lobbyists to cripple the service, even though they were under the clear direction from the President of The United States at that time to establish solid communication services to the rural and underserved urban areas of our country. The efforts to limit LPTV included limiting the transmitter power output of LPTV to a lowly one kilowatt when full power stations were covering the same market area with one megawatt!

6. The most destructive verbiage in the 1982 document that created the LPTV service was the designation of LPTV's as "secondary." At the time, not many people (if any) knew what "secondary" status really meant or how it would affect them if they decided to enter into the LPTV business. It soon became clear that secondary meant that an LPTV operator would have to shut down or change channel if its station caused interference to any full power station. It then became "reasonable" for any U.S. citizen to apply for and get a construction permit to build an LPTV, as long as you had good engineering to ensure that you would not interfere with full power stations or no full power station around your coverage area was going to build a bigger signal with which you would interfere. This was easily accomplished with a

telephone call to the full power station with which you would potentially interfere, asking them about their plans for expansion in the future. Once satisfied that you would never interfere with your neighboring full power stations, you then applied for a construction permit. This application was based on reasonable calculations, and you made your LPTV investment accordingly. Because an analysis had already been made of all existing stations, the likelihood of losing your LPTV station because of “secondary status” was almost *nil*.

7. However, in about 1988, after much lobbying by the NAB and others, someone decided that full power stations would get a second broadcast channel to broadcast in HDTV. The spectrum used by LPTV became the target for the full power stations “grabbing” additional spectrum. LPTVs were forced to make available much of the spectrum they then occupied, because now all of a sudden, secondary meant “LPTV’s must move out of the way for a new television service called “Full Power DTV stations.” To make matters worse, in 1996, the Commission and Congress found that “auctioning” spectrum was very profitable, and any spectrum that was not “primary” could be sold at auction. Much worse in 1998, Congress decided to give some of Channels 60-69 to public service and the rest of that band and all of Channels 52-59 to auction for new services! All of our stations were and are affected by this “grabbing” of television spectrum, which has cost us hundreds of thousands of dollars to rectify – and we still are not finished spending money to accommodate the loss of our channels!

8. In 1999, the Community Broadcasters Association (“CBA”) was able to get some very minor reprieve for LPTV stations by convincing Congress to enact the Community Broadcasters Protection Act (“CBPA”). The CBPA was (and is) an over-burdensome law that allows ANALOG LPTV stations to gain primary status with no cable “must carry rights.” The CBPA was intended to stop the “grabbing” of spectrum occupied by LPTV stations and to

prevent the destruction of the LPTV industry. The CBPA requires Class A stations to produce three hours of local programming per week, while no full power station is required to produce any local programming. Producing local programming requires major capital expenditures in an industry where the availability of capital is very limited. We know and believe that no LPTV or Class A station can invest the amount of money required to build a digital facility and maintain the burden of any required local programming without some assurance of longevity. Therefore all stations that invest in building a second DTV channel or stations that convert their LPTV analog channel to DTV must be afforded primary status without the burden of Class A status.

9. The full power stations have received their DTV allotments at the expense of a lot of spectrum once used by LPTV. There is no reason to make LPTV or Class A stations secondary now that the full power "spectrum grabbing" has settled down. The full power stations have what they wanted, and there is simply no reason to require any television service that has survived to now be secondary. It is beyond comprehension that any reasonable person at the Commission can ask any citizen of this great nation to invest hundreds of thousands of dollars to build an LPTV/Class A DTV facility to serve the public knowing that it can be legally auctioned right out from under them. This bizarre and outlandish thinking that any LPTV or Class A DTV service can survive without primary status is unreasonable and unthinkable and will certainly destroy the LPTV/Class A DTV service before it even gets out of the gate, which is clearly not in the public interest. Secondary status for the LPTV services was an idea that was tried back in 1982 and did not work; history has proven that fact. There is no reason that secondary status will be beneficial to the public or station operators in the future. No LPTV or Class A station will ever knowingly build a DTV station if they have the threat of their station being auctioned, and therefore secondary status will stifle the transition to DTV which is clearly

not in the public interest. We simply cannot and will not support the Commission to give any secondary license to any permittee or licensee in the television spectrum.

10. MAXIMUM FLEXIBILITY: LPTV and Class A stations are a unique brand of broadcaster. We serve every niche of audience that one can think of. Therefore with the advent of DTV conversion, we must have maximum flexibility in technical standards with our signals to provide any new digital services. These include, but are not limited to, current two-way communication data services along with any wonderful new services that we and others may develop in the future. We are not technically expert enough to see all the possibilities now, but we know that we should be able to use or lease part of our spectrum to cellular phone service type providers, two way broadband internet providers, Video-on-Demand applications, or any other service that can be delivered by our signals. No limits should be placed on our ability to provide digital services to the public, because it would not be in the best public interest to do so. We support paying a fee for subscription services on the same percentage of revenue basis as full power stations.³

11. USE OF FULL 6 MHz SIGNAL: The NPRM asks in paragraph 25: “What circumstances, if any, would justify exclusion of a minimum free over-the-air digital program service requirement?” We believe that prior proceedings have already answered this question. Congress has determined that for the full power DTV service to be “viable,” 85% of television households need to be capable of DTV reception. Once complete, this 85% benchmark will require that all full power stations return their analog channel to the government. Meanwhile, all full power stations are required to be carried on cable and on satellite TV. Currently cable

³ But *see* par. 14, *infra*, with respect to a threshold that should have to be crossed before fees are payable.

enjoys approximately 62% coverage of U.S. homes, and satellite enjoys over 10%. Therefore it is reasonable to say that someday soon 85% of households in the United States will be capable of receiving full power DTV, provided that their cable or satellite provider carries the local full power DTV signals. Since Congress has already established the benchmark of 85% television households being able to receive a DTV signal as being “viable,” there is no reason to force an LPTV or Class A station to broadcast any minimum video requirement until they are equally “viable.” In our situation, we would become “viable” if the local cable operator agreed to carry our signal. The local cable company here covers 72% of the households in the market, and our over-the-air households number 14%. If the local cable operator agreed to carry us, our coverage would equal 86% of the households in the market, and we could reasonably be required to carry a free video signal. This logic is good for the public interest in a practical sense; if an LPTV or Class A station uses its entire spectrum (6 MHz) for subscription services, the fees generated would be greater and therefore will become even a greater benefit for the taxpaying public. Conversely, forcing an LPTV or Class A station to run a television station with little or no viewership will almost certainly financially destroy many LPTV and Class A DTV start-ups.

12. DIGITAL CALL SIGNS: The advent of the -LP and -CA suffixes (as opposed to -TV) has caused serious confusion in the public and in the advertising marketplace. This problem has led to us continually explaining to customers that indeed their advertisement will appear on our TV station even though it says we are an LP station! To avoid this in a digital world and to serve the public interest, all DTV stations, including LPTV and Class A stations, need to be afforded the ability to use the suffix -DT to keep viewers and advertisers from being confused about what they are watching.

13. DIGITAL BOOSTER STATIONS: We desperately need digital boosters in our market. We have a very hilly terrain in the Pittsburgh market. This terrain makes our coverage contours very "jagged" when viewing a coverage map, where they otherwise would be "round" if the area had flat terrain. We could easily "fill in" our "dead spots" and "round out" our coverage area if we could use a single frequency network. We could also provide extended service beyond our protected contour to very rural areas that are adjacent to our coverage area and have no local programming service if we were permitted to broadcast to them through these digital boosters. We are in favor of these boosters that are adjacent to our coverage area only if they are located in our television market as designated by Nielsen Rating Service and if they are secondary and do not interfere with any broadcaster. This idea could help bring a neighboring LPTV to a the community next door that is not serviced by any local video programming outlet. Additionally, it will allow for the maximum use of the DTV spectrum and will thereby be in the public interest.

14. FEES: Class A, LPTV and Translators should not be required to pay the 5% subscription fee until such time as the station has gross sales per year of \$3,000,000 which has been determined by the Commission in the closed captioning rules (Sec. 79.1(d)(12)) to be a reasonable threshold for a station to be able to contribute to public interest funding requirements.

15. DIGITAL CLASS A TV AREA FOR LOCALLY PRODUCED PROGRAMMING: The commission should implement a standard rule of the larger of a 100-mile radius from a station's main studio, or the predicted Grade B contour for those contiguous stations with greater coverage than 100 miles from the main studio, where the production of programming is deemed "local" for Class A purposes. This rule would take care of any situations where a DTV contour may be smaller than the LPTV's analog contour. The

Commission should also allow for local programming outside these contours if an employee of the licensee (*e.g.*, a reporter or photographer) is personally covering local people or events of interest to local citizens outside the coverage area. An actual example of this would be Class A station WKAG-CA in Hopkinsville, KY, which sent a news crew to Iraq to cover the local soldiers doing their mission. This is of certain interest to WKAG's local community and should be considered local programming; but under today's rules, it does not qualify unless interspersed with talking heads in Hopkinsville that take up time that would otherwise be available for footage from Iraq. Another example is if our station travels to Harrisburg, PA (150 miles away) for the high school football state playoffs to film the home team, we get no credit today; but this programming should certainly be treated as local.

16. CONCLUSION: WBGN-TV's principals have spent a major part of their lifetimes trying to make local service a reality. The present regulatory scheme has been stifling, to put it mildly, if not smothering. This proceeding gives the Commission an opportunity to open the door and let fresh air in -- to invigorate the industry and to make the localism that the Commission continues to say it wants to promote come to life, through the creativity of local owners and small businesses, in a way that major national corporations will never bring to bear.

Respectfully submitted,

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