

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	)	<b>MB Docket No. 03-185</b>
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 COMMUNITY BROADCASTERS ASSOCIATION**

1. The Community Broadcasters Association ("CBA") hereby submits its comments in response to the Commission's Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding, FCC 03-198, released August 29, 2003.<sup>1</sup> CBA is the trade association of the nation's Class A and Low Power Television ("LPTV") stations. It participates regularly in Commission proceedings, as well as in legislative and judicial matters, to express the views of the Class A/LPTV industry.

2. The Notice is detailed and thorough. CBA appreciates the effort that the Commission has made to examine the digital transition for Class A and LPTV stations in such detail. These comments will set forth CBA's views on the proposals, based on the following principles:

- a. Class A and LPTV stations should make the transition to digital operation in an orderly and efficient manner.
- b. Incentives should be provided to encourage the construction of digital facilities.

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<sup>1</sup> 68 FR 55566 (Sep. 26, 2003).

c. The transition should impose as few economic burdens as possible, because Class A and LPTV stations have fewer economic resources than most full power TV stations.

d. Class A and LPTV stations should be afforded technical flexibility, to enable them to experiment and to innovate with digital technology, and to ensure the survival of as many stations as possible.<sup>2</sup>

3. Importance of Class A/LPTV Survival. The public interest strongly requires that the Commission make a special effort to enable Class A/LPTV stations to make the digital transition. These stations have the greatest representation of any mass media service in terms of local ownership, local programming, niche programming, small business ownership, minority and female ownership and management.<sup>3</sup> No other broadcast service is required to air as much locally produced programming as Class A television, and LPTV stations are also widely known for their local and minority-oriented services.<sup>4</sup> These enterprises are deserving of strong

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<sup>2</sup> The Notice leads off with several questions about TV translators. CBA will rely on the National Translator Association (“NTA”), with which it has cordial relations, to respond to such questions as whether translators should be allowed to originate more material or whether heterodyne repeaters should still be authorized. CBA has no objection to allowing substantial flexibility to translator operators, as they too will face logistical and economic problems during the digital conversion process.

<sup>3</sup> Control of large numbers of stations by large corporate conglomerates is noticeably absent in the Class A/LPTV industry.

<sup>4</sup> Each Class A station must broadcast an average of three hours a week of programming produced within its Grade B service contour. *See* Sec. 336(f)(2)(A)(2) of the Communications Act and Sections 73.1125(c) and 73.6000 of the Commission’s Rules. While the Commission suggests at par. 127 of the Notice that the Grade B analog contour should remain the area within which local programming must be produced, CBA suggests that it would be more reasonable to specify the larger of the Grade B analog or the noise-limited digital contour of a station or commonly owned group of stations.

encouragement and support from the federal government, to ensure their survival and viability in the coming digital broadcast world.

4. Applications for a Second Channel. There is no question that Class A/LPTV stations should be permitted to apply for a second channel for digital operation.<sup>5</sup> These stations serve the same viewers as full power stations, and they face all of the same problems over time as the universe of television of receivers evolves toward digital technology. Indeed, Class A/LPTV stations face a more difficult situation in that most of them are not carried by cable television systems, so they will not have the benefit of any format conversion services that cable systems may offer.<sup>6</sup> Flash-cut from analog to digital operation on a single channel may well be suicidal to a station, because it will instantly cut off a substantial portion of the station's potential audience. Therefore, it is vital that the Commission entertain applications for second channels during the transition, in any instance where a second channel can be found consistent with interference rules.

5. Interference Standards. Finding digital channels is likely to be easier than finding new analog channels, but it will still be a daunting task in many markets. Interference standards should not be any more of an obstacle than is necessary to avoid destructive interference that results in loss of service to the public. CBA suggests that the present system be retained, where a prohibition of overlap between interfering and protected contours is established as the initial test,

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<sup>5</sup> Section 336(f)(4) of the Communications Act requires the Commission to accept digital applications from Class A stations. CBA believes that the Commission's prior interpretation of that statute, permitting it to accept but not process or grant such applications, is contrary to the plain intent of the statute and is essentially irrational.

<sup>6</sup> While some Class A/LPTV stations have mandatory cable carriage rights under Sections 614(c) and 614(h)(2) of the Communications Act, none has mandatory direct-to-home satellite carriage rights, and only a handful are carried voluntarily by satellite operators.

and the terrain-based OET Bulletin 69/Longley-Rice method is available when the contour method produces an unnecessarily restrictive result.<sup>7</sup> Some engineers believe that the contour method should be abandoned in favor of Longley-Rice as the standard method, particularly if the software becomes more widely available at reasonable cost.<sup>8</sup> In either case, Longley-Rice, which virtually everyone agrees is more detailed and accurate than the contour method, should be recognized as an acceptable approach for any applicant who wants to use it, without having to request a rule waiver as is required today.<sup>9</sup>

6. Filing Windows. While different people have different views about the merits of periodic, as opposed to rolling, application filing windows, most agree that a periodic system where windows are as infrequent as they have been for Class A/LPTV stations in the past is unsatisfactory, and an alternative must be found. On the other hand, fairness requires that everyone be given an even chance at the start to apply for whatever channels may be available. Therefore, CBA suggests that the Commission first announce a short freeze on applications for

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<sup>7</sup> While the Longley-Rice method may be more precise, the contour method is easier and less expensive for those who do not need a more sophisticated approach.

<sup>8</sup> CBA believes that in applying the Longley-Rice method, there is no need or reason to hold Class A/LPTV stations to a stricter standard than full power stations. Thus rather than being permitted to cause no interference to a digital TV station (“no” interference being up to 0.49% because of rounding to the nearest whole percent), the standard should be the same as for full power station, *i.e.*, no one proposal may cause more than 2% interference, and all together may not cause more than 10% interference to a full power station. *See* Sec. 63.623(c) of the Commission’s Rules. Allowing Class A/LPTV stations to use that rule would not expose full power stations to any more risk than they face today.

<sup>9</sup> CBA will leave it to engineer commenters to speak to the question of whether any changes are needed in the desired-to-undesired signal ratios that the Commission currently uses in its interference rules. There is no groundswell of opinion in favor of changing the existing ratios. Some engineers believe that the ratios should be applied at a protected digital station’s noise-limited contour.

changes in existing stations -- no more than 30 days.<sup>10</sup> During this period, the Commission's database can be stabilized.<sup>11</sup> Then a brief window should be opened for applications by existing licensees for digital channels, followed by a 60-90 day freeze on digital applications to allow all applications to be digested into the database and to allow the Commission to determine which ones are mutually exclusive. After that, applications by existing licensees for digital stations should be accepted at any time, on a first-come, first-served basis -- in effect, a rolling window where only applications filed on the same date may be mutually exclusive.<sup>12</sup>

7. Eligibility. The Commission has often recognized the importance of preserving existing service over the benefits of new service.<sup>13</sup> That principle is valid and should be applied here. Initially, only operators of existing stations should be eligible to file for a second digital channel. No applications for new, free-standing digital stations should be accepted until there has been an adequate opportunity for existing stations to apply for digital channels to be paired

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<sup>10</sup> An limited exception or waiver could be permitted for a station facing a *bona fide* involuntary loss of transmitter site and the prospect of going dark.

<sup>11</sup> CBA suggests that the Commission issue a public notice advising all stations to check their database entries during the freeze period to make sure that their existing facilities are properly reflected.

<sup>12</sup> CBA does not support geographic windows, because wherever the line is drawn between regions, there will always be someone just on the wrong side of that line, whose ability to find a digital channel will be constrained by someone on the other side of the line whose window opened earlier. That problem could theoretically be avoided by restricting signal strength at the geographic area boundary line, but such a restriction would be unnecessarily constraining and harmful for a centralized service like broadcasting as opposed to the cellularized services where the Commission has offered area-wide licensing in the past.

<sup>13</sup> See, e.g., *Letter to Thomas J. Hutton, Esq.*, 16 FCC Rcd. 11979, 11981-82 (MB, 2001); *Establishment of a Class A Television Service*, 15 FCC Rcd. 8244 (at par. 32) (2001).

with their analog facilities. An “existing” station should be defined as one that has constructed facilities and filed an application for a license to cover construction permit.<sup>14</sup>

8. Preservation of Class A Primary Status. Congress made a strong statement in favor of permanence for stations providing local programming when it enacted the Community Broadcasters Protection Act of 1999 (“CBPA”).<sup>15</sup> This intent was clearly expressed and must be fulfilled through the transition to digital operation. While the Notice suggests that a second channel awarded to a Class A station should not be afforded primary status, CBA strongly disagrees. Failure to award primary status both runs contrary to the intent of Congress and creates a negative incentive for an analog operator to invest in high quality digital transmission facilities. Where a second channel meets Class A interference standards, there is no reason not to grant primary spectrum protection to both channels until the time when the licensee must turn back one of its channels at the end of the transition. Where it is not possible to find another channel that meets Class A primary service standards, a Class A station should be able to elect to apply for a second channel on a secondary basis. Under no circumstances, however, must the Class A licensee ever be left in a position where neither of its channels (assuming they are in-core) is primary; nor must it be forced into a position where at the end of the transition, it ends

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<sup>14</sup> There is no need or reason to exclude stations operating under program test authority whose license applications happen to be pending at the time the window opens. If the Commission finds it in the public interest to open the initial window to holders of unbuilt construction permits, applications by operating stations should be given priority in case of interference conflicts. No priority or separate treatment is justified for noncommercial stations, because there is no separate class of noncommercial stations in the Class A/LPTV environment, and stations are free to shift from one category to the other at will. Thus a priority for noncommercial stations would be subject to serious potential abuse, leaving aside the question of whether noncommercial programming should be favored as a matter of policy.

<sup>15</sup> Codified as Section 336(f) of the Communications Act.

up with a single channel that is secondary. Every Class A licensee is statutorily entitled to have primary status on at least one channel at all times.

9. Additional Primary Spectrum Filing Opportunity. Many LPTV operators have expressed to CBA their desire to achieve primary status, so that they may continue to invest in their stations without fear of the axe of death suddenly falling upon them. The transition to digital service offers a significant opportunity to provide permanence for valuable local and niche LPTV services, particularly since the initial turmoil in rearranging full power digital allotments is now essentially over with, and virtually all full power stations have found their way to digital channels with which they can live. Where spectrum still remains available, LPTV operators who construct digital facilities promptly and serve their communities should have the constant threat of death lifted. There is no statutory prohibition on affording these stations primary status. Indeed, at least in the Class A context, there is affirmative statutory authority for additional opportunities. While the CBPA established a one-time eligibility window for Class A applications, Congress expressly gave the Commission the authority to grant additional Class A applications at a later date if the public interest would be served.<sup>16</sup> While the Commission has heretofore declined to exercise that authority, there is little doubt that Class A status has been actively sought by many stations and has proved to be an important incentive to provide local programming. There is also little doubt that use of the authority to grant permanence to more stations through Class A status would be an extremely powerful incentive to LPTV stations to construct digital facilities promptly. Where interference requirements can be met -- and that may well be possible in the digital environment -- there is every reason to offer the opportunity to LPTV stations that construct and operate digital facilities to qualify those facilities for permanent

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<sup>16</sup> See Section 336(f)(2)(B) of the Communications Act.

status, as Class A stations or otherwise.<sup>17</sup> Both Congress and the Commission have strongly articulated a policy to encourage prompt migration to digital operation. Congress has given the Commission a strong tool to accomplish that objective in the LPTV environment, and the Commission must take advantage of it.

9. Constraints on Applications. The digital transition should be a process of changing from analog to digital operation and not a new opportunity to shift stations to new communities, except where there is no other way to preserve the station because of channel scarcity. Therefore, CBA urges the Commission to require that digital applications qualify as minor changes under Section 73.3572(a)(3) of the Commission's Rules, which is to say that the proposed digital protected contour must have at least some overlap with the protected analog contour of the analog station with which it is associated.<sup>18</sup> CBA sees no reason to impose a new requirement to provide a minimum level of service over the community of license, partly because there is no such requirement in the analog environment, and its absence has not led to a significant number of abuses. In addition, some stations will be unable to find a digital channel unless they operate at very low power, and the power limit may constrain their ability to cover their community with a specified signal level.

10. Minimizing Mutual Exclusivity. Mutual exclusivity is a nemesis, particularly for existing stations. Many, if not most, Class A/LPTV, will have to struggle to raise capital to construct digital facilities and surely will not have money to bid at auction for a digital channel.

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<sup>17</sup> Indeed, channels on which stations meet all full power TV DTV interference requirements should be listed in the TV Table of Allotments (Section 73.622 of the Rules).

<sup>18</sup> While the Commission may entertain waiver requests where it can be shown that no digital channel is available with contour overlap, the applicant should not be permitted to move more than the minimum distance necessary to find a channel that meets interference standards.

Having auctions will thus have a serious detrimental effect, because it will force out those who have invested their financial resources on the best local service and thus will potentially deprive the public of that service.<sup>19</sup> Moreover, this proceeding involves initial digital channels for existing stations; and in that context, Section 309(j)(2)(B) forbids the use of auctions. Even if auctions were lawful, the Communications Act explicitly encourages the Commission to use engineering techniques to avoid mutually exclusivity,<sup>20</sup> and the Commission should do so to the maximum extent possible in the Class A/LPTV digital transition. CBA offers several suggestions:

- a. As many channels as possible should be made available for Class A/LPTV digital operation, including Channels 52-59 and 60-69. While it is true that those channels will not be available indefinitely, their ultimate fate is well known, and those Class A/LPTV licensees who need to use those channels should be permitted to do so, on a temporary<sup>21</sup> and secondary basis, with knowledge of the risk.<sup>22</sup> CBA also believes that the Commission is not statutorily required to oust LPTV operations from Channels 60-69 after the transition, because Section 3004(e)(1) of the Balanced Budget Act of 1999<sup>23</sup>

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<sup>19</sup> The likelihood of the government raising any significant amount of money through auctions of digital channels to existing licensees is also slim.

<sup>20</sup> Section 309(j)(6)(E).

<sup>21</sup> Section 336(f)(6)(A) of the Communications Act prohibits the Commission from granting permanent Class A status to any operation above Channel 51.

<sup>22</sup> The Commission did not close off Channels 52-69 to analog LPTV stations, including those displaced from in-core channels. *See* Sec. 74.402 of the Rules and *Reallocation Service rules for the 698-746 Spectrum Band*, 17 FCC Rcd. 1022, par. 14, 27, 48 (2001). There is no more reason to close those channels for digital operation.

<sup>23</sup> Pub. Law 105-33, Aug. 5, 1997.

forbids only operation under a “television broadcast license” after the transition and says nothing about any secondary service. There is no reason to interpret that statute to exclude a secondary service from using any spectrum at any time until the primary user is ready to begin actual operation.

b. Each licensee should be restricted to filing for one paired digital channel for each analog station. It will be tempting to file for as many channels as one can find, in the hope of coming up with one that is not subject to mutual exclusive applications. However, permitting multiple applications will clog the system and result in significant additional mutual exclusivity. The benefits to individual licensees in terms of having more than one “ticket” to maximize the chances of having a winning ticket can be achieved better through settlement opportunities, discussed in the next sub-paragraph.

c. A generous opportunity should be afforded for settlements among mutually exclusive applications, with few, if any, constraints on engineering or financial solutions. In particular, parties to a settlement should be permitted to propose different channels from those in their initial application to maximize the chances of resolving conflicts.<sup>24</sup>

d. Settling applicants should be permitted to utilize all available techniques to allow all to operate, including private agreements to accept interference and precise frequency lock to gain up to 8 dB of additional interference immunity. In addition, two or more Class A/LPTV stations should be permitted to share one 6 MHz digital channel if

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<sup>24</sup> The Commission recently allowed low power FM applicants to change channels as part of the settlement process. *See* Public Notice, DA-03-3009 (rel. Oct. 1, 2003).

no other solution is available, including dividing the time and/or partitioning the frequency band.<sup>25</sup>

e. The use of modern techniques to minimize interference, and thus to minimize conflict, should be both permitted and encouraged, if not demanded. For example, collocation of first-adjacent channel stations should be permitted where their power and antenna patterns do not diverge greatly. Antenna cross-polarization isolation should be recognized, even to the point of allowing more vertical than horizontally radiated power. Areas that already receive interference should be disregarded in determining whether new interference will be caused (known as “masking”). Finally, the directional characteristics of over-the-air receiving antennas should be recognized, allowing applicants to rely on front-to-back or front-to-side discrimination in predicting interference.<sup>26</sup>

f. The time has come to require mandatory frequency offset as a way to minimize interference.<sup>27</sup> While the Commission has not previously mandated the use of offset, so as not to burden TV translators and LPTV stations with limited financial resources, as time passes and the spectrum becomes more crowded, the justification for allowing stations to operate without offset decreases. CBA suggests that where an

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<sup>25</sup> For example, two stations could divide the band, each taking 3 MHz, which would allow for each licensee to offer one high definition signal at the 480p level plus some data services.

<sup>26</sup> It has been suggested to CBA that the Commission allow the use of as many techniques as can be reasonably taken into account in Longley-Rice based computer programs. Moreover, some engineers have urged that it be mandatory to take more account of vertical antenna patterns, so that downtilted power is not entirely disregarded in interference calculations. CBA supports realistic interference calculations but does believe that it is important not to take the level of detail beyond what is readily available in reasonably priced computer software that will run on commonly used computers.

<sup>27</sup> Frequency offset results in a 17 dB benefit: for example, co-channel protection is reduced from 45 dB to 28 dB. *See* Section 74.707(d)(1) of the Commission’s Rules.

applicant (whether for digital facilities or otherwise) is constrained because another station does not operate with offset, the applicant should be permitted to offer to pay for the cost of offset equipment. If the other station does not accept the and implement offer, then that station should be required to accept the resulting interference.<sup>28</sup>

g. If mutually exclusive applicants cannot reach a settlement, then all applications that have not been separated from the mutually exclusive group through amendment should be dismissed, just as the Commission has done with digital modification applications by full power digital TV stations.<sup>29</sup> The threat of dismissal will be an extremely powerful incentive to settle and should go a long way toward curtailing unreasonable hold-outs among applicants, because refusing to settle will not enhance an entity's benefit of getting a channel.<sup>30</sup>

11. Construction Period. Full power stations have been given construction deadlines for their second DTV channel based on a fixed, uniform, nationwide timetable, which has already expired for most stations.<sup>31</sup> A fixed timetable may have been appropriate when each station was

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<sup>28</sup> Even that approach may not be sufficient, because the existing station may cause serious interference to the applicant that could be avoided by offset. There should come a point where the acceptance and installation of offset equipment should become mandatory. CBA also urges that the Commission immediately forbid the installation of any new or replacement transmitter or exciter that does not incorporate the capacity for offset, even if zero offset is the default and is used where neither plus nor minus offset is needed.

<sup>29</sup> *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd. 5946 (at par. 44) (2001), *aff'd. on recon.* 16 FCC Rcd. 20594 (2001).

<sup>30</sup> CBA does not believe that a point ranking system can be developed that would provide reasonable assurance that the result would advance the public interest. However, if the Commission decides to entertain digital applications from unbuilt permittees during the initial window, CBA believes that incumbent licensees should receive an absolute priority over unbuilt permittees in case of mutually exclusive digital applications.

<sup>31</sup> See Section 73.624(d) of the Commission's Rules.

automatically assigned a companion digital channel; but it would be very difficult to implement in a fair and impartial manner in the Class A/LPTV environment, where the timing of issuance of digital construction permits will depend on factors such as mutual exclusivity that an individual applicant cannot control. Therefore, Class A/LPTV digital construction deadlines should be based on the date of issuance of an individual construction permit. Given bottlenecks that may arise with the manufacturing community and the unforeseen circumstances that always seem to arise, CBA suggests a presumption of a the standard three-year construction period to apply to Class A/LPTV stations that are granted a second channel. On-channel conversions should have no deadline other than the absolute end of the transition.<sup>32</sup>

12. End of Transition. The end of the transition will be particularly stressful for Class A/LPTV stations that are not carried on cable and will not have the benefit of standards conversion that may be available in cable set-top boxes. Those who elect to convert on-channel will have a very difficult business decision to make in terms of which part of their audience they sacrifice at any particular moment in time. CBA believes that with strong marketplace incentives present, the Commission can and should rely on private business judgments as to when the last analog service is shut down, at least in the case of secondary services if not Class A services as well.<sup>33</sup> There is no harm in allowing a secondary service to operate as long as spectrum is available. It may turn out that some of the minority and rural audiences that often

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<sup>32</sup> If the Commission wishes to impose a firm deadline for fear that the end of the transition will be extended too far into the future, the standard three-year period applicable could be applied to all DTV construction.

<sup>33</sup> If the Commission does not believe that Class A stations should be permitted to continue analog operation beyond a certain point in time if they want to occupy spectrum on a primary basis, they should be free to relinquish their primary status if they would prefer to enjoy privileges available only to secondary stations.

rely on Class A/LPTV services are the last to purchase digital receivers, so the stations that serve them may be the last that should terminate analog operations. Indeed, some operators believe that at least on secondary channels, an LPTV operator should have no final regulatory deadline at all for terminating analog operation. Let the marketplace decide when it is no longer profitable to continue analog operation.

13. On-Channel Conversion. Despite every effort, there will be some stations that are unable to find a second channel for digital operation and some that choose not to construct a second facility. Those stations should be permitted to convert to digital operation at any time on their existing channel, as a matter of right. As long as conversion does not expand a station's protected contour in a way that harms or conflicts with other stations, on-channel conversion should have absolute priority over applications by other stations for modifications or second channels. Moreover, CBA believes that if certain requirements are met, a station should be permitted to convert on-channel by simply giving notice to the Commission within 10 days after the fact.<sup>34</sup>

14. Other Technical Issues. The Commission has raised additional technical issues, on which the engineering community is likely to have more detailed comment than CBA. CBA does believe, however, that the Commission should make it as easy as possible for stations to go through the conversion process. To the extent that analog transmitters can be converted to digital operation without unduly relaxed emission masks that increase interference, such conversion

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<sup>34</sup> CBA understands that a station can convert from analog to digital operation with no increase in interference if, conservatively, its reduces digital ERP to 25% of the analog level. That would be a good threshold for permitting conversion upon providing a simple notice to the Commission, assuming no change in antenna height or pattern. CBA urges the Commission to re-examine its power limits for digital Class A/LPTV stations with this 25% figure in mind. If no expansion of service area would be involved, there is no reason to limit DTV ERP to 10% of analog ERP, as is currently provided in Sections 74.735(a) and (b) of the Rules.

should be permitted.<sup>35</sup> Regarding the Commission's suggestion of introducing automatic power control, CBA does not object to automatic power limiters, but it does not believe that a licensee should be required to use equipment that automatically boosts a falling power level because of the potential distortion that such equipment may introduce into a digital signal.<sup>36</sup>

15. High-Band VHF Channels. CBA urges the Commission to examine its power limits for high-band VHF stations (Channels 7-13), at least in the digital environment if not analog as well. In the full power environment, both analog and digital,<sup>37</sup> high-band stations are permitted approximately three times the power of low-band stations. In the Class A/LPTV environment, however, the only distinction in power levels is between all VHF on the one hand and all UHF on the other. The propagation differences between low- and high-band signals, due to different

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<sup>35</sup> The Notice introduces the concept of multiple emission masks, with more stringent interference protection requirements for more relaxed masks. Again, CBA does not oppose increasingly sophisticated techniques, provided that they do not put interference calculations beyond the reach of many licensees. See note 22, *supra*.

<sup>36</sup> CBA also urges that Class A/LPTV operators be permitted full access to broadcast auxiliary spectrum, as they will need it as much as full power stations to originate remote programming and link their studios and transmitters. Access to vacant UHF broadcast channels for studio-transmitter links under Section 74.602(h) of the Rules should also continue, because that spectrum is very cost-effective to use, and some of it may remain available for point-to-point operation notwithstanding the increasingly intensive use of UHF-TV channels as the DTV transition progresses.

<sup>37</sup> Section 73.614(b) of the Commission's Rules establishes analog ERP limits of 20 dBk (100 kW) at low band and 25 dBk (316 kW) at high band. UHF stations, which suffer an even greater propagation disadvantage, are permitted a maximum 37 dBk ERP (5,000 kW). Under Sections 73.622(f)(6), (7), and (8), full power digital limits vary by station because of interference considerations but are capped at 10 kW ERP at low band VHF, 30 kW at high band VHF, and 1,000 kW at UHF.

wavelengths, are the same for full power and Class A/LPTV signals. Thus the Commission should raise the high-band Class A/LPTV limits to three (or 3.16) times the low-band limits.<sup>38</sup>

16. Technical Flexibility. While there is some reason to have a uniform technical standard to encourage consumers to purchase DTV receivers, and the Commission has adopted the 8-VSB standard to that end, there is not unanimity in the industry that 8-VSB is the best available standard. Some parties have argued that the Commission should permit flexibility for those stations that wish to take the risk of using a different technical standard, particularly one with multiple distributed base station transmitters.<sup>39</sup> CBA suggests that allowing Class A and LPTV stations to experiment with different technical standards would be a very good way for the Commission to learn more about whether alternative systems might result in better service to the public. Even if the Commission decides to require all full power TV stations adhere to the 8-VSB standard, so that consumers who purchase 8-VSB receivers are assured of receiving a certain number of services, that decision should not preclude all experimentation. Class A and LPTV stations, which operate with much less power than full power TV stations, would provide an excellent laboratory environment to see what technical improvements, if any, would best serve the public interest. Thus digital Class A and LPTV licensees should be permitted to utilize any technical standard they wish, as long as it does not result in more out-of-band emissions that might cause interference than 8-VSB does.<sup>40</sup>

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<sup>38</sup> The new ERP limits (rounded) would be 9.5 kW analog and 900 watts digital. But see fn. 34, *supra*, regarding the wisdom of raising digital power levels to 25% of analog levels.

<sup>39</sup> See *LPTV Pilot Project Digital Services Act (DSSA)*, codified at 47 U.S.C. Sec. 336(h); *Implementation of DSSA*, 16 FCC Rcd. 9739 (par. 12-16) (2001).

<sup>40</sup> The use of different technologies raises the station identification issues discussed by the Commission at par. 85-90 of the Notice. CBA will rely on transmitter manufacturers and engineers to discuss this subject.

17. Service Flexibility. Along with flexibility to experiment with different technical standards Class A and LPTV stations should be permitted to experiment with different service options, including two-way in-band services, video-on-demand, and other customized or specialized service offerings.<sup>41</sup> As long as some element of the service is provided to the public at large and meets the definition of “broadcasting” under Section 3(o) of the Communications Act,<sup>42</sup> the content of that service and the way that the communications channels are structured should be left to the discretion of the licensee, subject only to basic legal content restrictions such as those prohibiting or restricting obscenity, indecency, unlawful lotteries, etc.<sup>43</sup> The degree of operational freedom that the Commission offers to Class A and LPTV licensees will make a lot of difference in the extent to which these entrepreneurs, whose stations have limited signal coverage and usually do not enjoy the benefits of cable and satellite distribution, will be willing to invest and to experiment early on, thus stimulating the interest of the public in digital services and speeding the DTV transition.

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<sup>41</sup> Congress has indicated its receptiveness to this kind of experimentation in the DSSA; *see* note 38, *supra*.

<sup>42</sup> CBA believes that the legal concept of “broadcasting” requires only that a signal be distributed without a fee to any member of the public who wishes to receive it. It is not necessary that such signal be in the 8-VSB or any other specific format or that it be receivable on conventional television receivers. While the conventional receiver concept, however defined, may once have been important, its importance is rapidly disappearing in today’s modern computerized technology. Who is to say what a “conventional” television receiver will be in a few years, or whether there will even be a “conventional” receiver? Pictures are already being transmitted to cell phones, and wrist watch and personal digital assistant (“PDA”) reception will not be far behind. Users of personal computers often watch streamed video on their computer monitors. Therefore, in the environment of digital television, the concept of “broadcasting” should be limited to distribution without charge or limits on those who wish to receive, without regard to the format or content of the material.

<sup>43</sup> There is no reason to conclude that the Commission is compelled by statute, or should feel driven a matter of policy, to impose Class A local programming requirements on more than one stream on a station that elects to stream multiple channels within a bandwidth of 6 MHz.

18. Hours of Operation and Simulcasting. The full power television industry is subject to requirements that their digital hours of operation meet certain minimums and that an increasing percentage of their analog programming be simulcast on their digital channel.<sup>44</sup> There is no need to impose these requirements on Class A/LPTV digital stations, as they are not likely to waste second-channel digital facilities that they were not compelled to construct in the first place.<sup>45</sup> The Commission has already acceded to requests that some full power DTV stations be exempted from the simulcasting requirement, in large part because of the opportunity to present innovative digital programming that may stimulate the sale of digital receivers.<sup>46</sup> In keeping with the concept of maximizing flexibility for Class A/LPTV stations to encourage them to convert to digital operation and to experiment with innovative services, the Commission should eschew simulcasting requirements and see what happens. The results may be instructive in the full power environment, as well as for Class A/LPTV stations.

19. Cable Carriage. Sections 614(c) and (h)(2) of the Communications Act seriously limit the number of Class A and LPTV stations that have mandatory cable carriage rights, and none of these stations has any broadcast satellite carriage rights. Yet these cable and satellite distribution systems, which are pervasive throughout the nation and exercise *de facto* bottleneck

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<sup>44</sup> See Sections 73.1740(a)(2) and 73.624(f) of the Commission's Rules.

<sup>45</sup> While all Class A/LPTV stations will ultimately be required to terminate analog operations and to convert to digital, and all should be offered an opportunity to apply for a second channel, CBA has nowhere in these comments suggested that any Class A/LPTV station should be compelled to construct a second channel if it prefers to convert on its existing channel after the transition. CBA is also not suggesting that Class A stations be exempted from complying with the minimum hours of operation required by Section 73.1740(a)(5) of the Commission's Rules on any channel on which they have primary status.

<sup>46</sup> See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television* (involving noncommercial stations), DA-03-3507, rel. October 31, 2003.

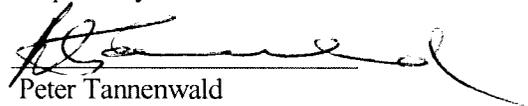
control over the delivery of video programming to their vast numbers of subscribers, are just as critical to Class A and LPTV stations as they are to full power stations, if not more so. Again to encourage Class A and LPTV stations to make the transition to digital service, the Commission should allow flexible arrangements between the stations and cable or satellite operators except only if and when prohibited by statute. For example, allowing cable operators to carry a digital Class A or LPTV station on any tier, and even to charge subscribers separately, would encourage those operators to carry Class A/LPTV digital stations and would certainly lay the groundwork for mutually beneficial private negotiations between Class A/LPTV operators and cable system operators.

20. Conclusion. The transition to digital operation will be complex, especially in light of the scarcity of channels and the limited economic resources of the Class A/LPTV industry. Nevertheless, the industry is enthusiastic about the prospective benefits of digital operation and is ready to move forward. But it needs flexibility in both the application process and in operations, and those whose analog service remains in demand must not be forced prematurely to shut those services down. It is also critical that the Commission make every effort to avoid circumstances that would require a digital station to be shut down once it has been built, just on the ground that it is legally "secondary."

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