

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20555

In the Matter of: )  
Amendments of Part 73 and 74 of the )  
Commission’s Rules to Establish Rules for ) MB Docket No. 03-185  
Low Power Television, Television Translators, )  
and Television Booster Stations and to Amend )  
Rules for Digital Class A Television Stations )

JOINT COMMENTS OF THE LPTV LICENSEES

To the Commission:

1. Comes now Abacus Television, Turnpike Television, et.al, (herein after “Joint Commentors”), and by their attorney, respectfully submit these comments to the above referenced Notice of Proposed Rule Making (“NPRM”).

I. INTEREST OF PARTIES

2. Each of the companies and individuals listed above is the licensee of one or more Low Power Television (LPTV), Class A Television, or Television Translator stations. Each of them meets the Commission’s definition of small business. Many of them are minority or female controlled. And each of them is a “Community Broadcaster” in that they serve small cities or specialized audiences in larger cities that are otherwise un-served or under served by so called “full power” broadcast stations (“Class C TV stations”). These Joint Commentors will be dramatically affected by the issues raised in the NPRM. In fact, their survival, and the survival of the entire community television service, will be determined by the Commission’s willingness to use the opportunity presented by this NPRM to correct numerous fundamental flaws in the existing LPTV regulatory regime. As now regulated, the Community Broadcast industry is mired in a tar pit of punitive, irrational and contradictory restrictions

that frustrate these small companies' best efforts to either make efficient use of the television channels they occupy or to make a living as broadcasters. Both their investors and their audiences suffer greatly as a result.

## II. OVERVIEW

3. Three general principles govern these Joint Comments. First, the Commission must use this historical moment to end, once and for all, the harsh, punitive, disparate treatment its rules met on Community Broadcasters, vis-à-vis our full power television broadcast brethren. The time has come to level the playing field. Second, what regulations are fair, equitable, or efficient differ dramatically in spectrally crowded, urban markets than in spectrum rich, rural areas of the country. Third, the Class A television service should be regulated in all respects like the primary, Part 73 service Congress intended to create. Rural translators, LPTV's and Class A's are one animal; urban translators, LPTV's, urban Class A's are another. Each is a different species, with differing capabilities, limitations and public interest benefits. Every action lumping rural and urban licensees together or dividing similarly situated licensees (e.g. urban LPTV's and urban Class A's) hampers their potential, performance, profitability, and public service productivity.

## III. DIGITAL TRANSLATOR REGULATIONS

4. As a part of the re-regulation of translators to permit the conversion to digital, the Commission should end its categorization of these licensees based on the happenstance of less than thirty-one seconds per hour of local program insertion and instead focus on the spectral environment in which they predominantly operate and the public they predominantly serve. That is rural and rural. These Joint Commentors respond to the Commission's digital translator rule proposals accordingly, below.

5. NPRM at para. 9. Comments: Translators, in addition to being used for the purposes cited by the Commission, are most importantly a tool for bringing television service to small towns and other rural habitats where the population density is too low to provide a market base that can support larger television stations. This same low population density implies low spectrum use. Translators operate in a spectral environment in which there is no regulatory or economic justification for imposing the cost of stricter transmitter emission masks, precise frequency offset, early conversion from analog to digital, or restrictions on the use of broadcast spectrum for non broadcast purposes.

6. NPRM at para. 12. Comments: Digital translators should have to pass through ONLY the broadcast and broadcast-related parts of the data. Full Power television licensees can deny retransmission consent if useful data is being deleted by translator operators. Thus, there is no need for regulations that specify a particular outcome (deleting non broadcast data or not). Otherwise, translators will unnecessarily be required to pass through data that at times is useless. This is one example of a general problem with the Commission's regulatory approach as expressed in this NPRM. This problem will reoccur throughout this proceeding. The definition of translators should be changed to focus on the rural nature of the service they provide. Simply put, television stations (including most LPTV, Class A and Class C television stations) provide service in urban, spectrally crowded areas. Most translators provide service in rural, spectrally rich areas. The Commission should redefine its regulatory categories to reflect this reality. Under this redefined regime a "translator" could import data from any source it chooses, in any modulation format, that the licensee concludes best serves its public. Instead of a "translator" service you have a "Rural TV" service. If the source of a translator's video has incorporated non broadcast data that it wants transmitted through to the translator's audience, that copyright owner can deny retransmission consent if the method used by the translator to insert that video onto the

translator causes meaningful harm to the signal originator's business objectives. Case-by-case, location-tailored compromises can be negotiated rather than a single formula being forced onto every situation.

7. In spectrum abundant areas, like the service areas of most TV translators, there is no great reason to rush analog broadcasters off the air. The displacement process will quite nicely "allocate" enough spectrum to meet the needs of digital television without any additional regulations. As spectrum is needed for digital television secondary translators are automatically displaced. If, at the end of the digital transition, a translator has not yet been displaced, it is self evident that its spectrum was not needed for digital television. So, why force a translator to take its analog signal off the air? For similar reasons the Commission should impose no limits on a translator's freedom to down convert HDTV or convert digital television back to analog television, or for that matter to convert analog television to digital television. Those decisions should be left to one on one negotiation between the translator and the provider of the signal being carried by it.

8. NPRM at para. 14. Comments: Translator operators should be permitted to choose their mode of transmission based on individual circumstances. The number of individuals each translator serves is so small that even on a cumulative basis the number of television sets served by translators and the number of households watching translators is inconsequential to the digital conversion process. Since no harm to the digital conversion process will be caused by regulatory forbearance, the Commission should let translators deliver their signals which ever way they want. Market forces will correct for bad judgments. When their constituents are ready for digital the market will signal the translator licensee that that is the case. When their constituents are ready for HDTV the market will tell them that also. Let the market decide when the time is right to convert.

9. NPRM at para. 16. Comments: The Commission seeks comments on numerous permutations of translator operator's rights to or prohibitions from deleting or adding to the digital signals it retransmits. The reason the Commission is confronted with so many different possibilities is because each of thousands of translators are the subject of a retransmission consent agreements with each of hundreds of signal providers. Each of these hundreds of thousands of separate contracts has slightly differing circumstances behind it. Any attempt to regulate a best outcome will pose unnecessary and undesirable restrictions in most instances. Yet there is no urgent reason to regulate these transactions. In the context of requesting retransmission consent each translator licensee can negotiate with each signal provider a compromise that best fits both parties needs. Subject to retransmission consent, what a translator operator can or cannot do to a digital signal should be left to private negotiations.

10. NPRM at para: 17. Comments: The Commission seeks comments on the use of BAS frequencies to transport signals to translator inputs. The answer to this question is implicit in the rural nature of the translator service. There is no spectrum shortage and little-to-no use of any spectrum band in the typical translator environment. Translator operators should not only be allowed the use of BAS frequencies, they should be allowed to use any microwave band, on a secondary basis.

11. NPRM at para. 20. Comments: The Commission's distinction between translators (originators of less than 30 seconds per hour) and LPTV's (more than 30 seconds per hour) is an antiquated, overly restrictive, artifact of a world that no longer exists. The class of service of these various licensees should be defined by the spectrum license-load in the area they operate. If the area is rural and spectrum is abundant then the license should be for a digital translator (or a Rural TV) station, and only the most minimal regulation is appropriate. In that environment secondary status has little impact because displacement by primary license users is unlikely and infrequent. Conversely, if the area is urban and spectrum is scarce the license should be for a digital Class A television (or a Urban TV) station and

more extensive regulation is economically justified. In that environment, secondary status is devastating, denying a business the permanence necessary to amortize its equipment costs, build a competitive sales staff, contract long-term cable carriage rights, or develop popular programming formats.

12. The regulatory distinction between digital television translators and digital LPTV stations should be based on how crowded the spectrum is in the market they are trying to serve. One measure of “rural ness” might be the number of grade B television signals received by the households to be served. If an area of households receives less than three grade B off-air television signals (or 2 or 4 or ?) an application could be classified as one serving a “rural” environment with the Rural Television service. Conversely, if 3 or more grade B signals are receivable the environment is Urban and applications to serve that area would be digital Class A television service or Urban TV service. Another approach might be to define “rural” in terms of distance from larger urbanized concentrations. For example, if the area to be served were less than 75 miles from the top 100 markets a licensee would be classified as “urban.” Depending on evolving levels of spectrum crowding, the coordination distance and number of markets could be increased to keep Rural Television license available only in non-spectrally crowded areas, where de minimus regulation is helpful and secondary status harmless. Alternatively, the Commission could just immediately begin distinguishing between Rural and Urban Television applications based on the number of primary, digital television signals received in the area proposed to be served.

13. Whatever the demarcation between Rural Television and Urban Television, rural spectrum use should remain secondary to urban spectrum use. Rural spectrum use should be subject to a minimum of regulation. After the conversion of the urban areas to digital the definition of rural can be adjusted to count the number of digital signals available. As rural areas become more spectrally crowded, because

of the growth of adjacent urban areas, any party could petition the Commission to redefine a grouping of households as “Urban.” A process similar to the one now used to incorporate new towns into preexisting television market definitions (for the purpose of determining must carry rights) could be used to keep the rural/urban demarcation up to date. In the unlikely event that an area loses its “urban-ness” the same process can be used to reclassify an area as rural.

14. NPRM at para. 22. Comments: Hereinafter, Joint Commentors will use the shorthand of Rural TV and Urban TV to comment on questions in this NPRM. If the Commission elects to perpetuate its pre-digital (prehistoric) translator, LPTV, Class A categories, Rural hereinafter refers to translators and LPTV’s in areas where television channels 2 thru 51 are still unoccupied and largely available, while Urban refers to Class A’s, LPTV’s and translator’s in areas where the TV band is at or near saturation. Consistent with this spectrum use density demarcation there is no good reason to treat Urban translator’s, Urban LPTV’s or Urban Class A’s differently. They should all be primary service licensees regulated under Part 73 of the Commission’s rules. If an urban television licensee in any of these services undertakes the cost and business risks of digitizing its station, it makes no sense to allow displacement of that digital TV service by new spectrum users. The needs to be addressed by new spectrum users have already caused the sacrifice of UHF channels 70 thru 76, then 60 thru 69, and then 52 thru 59. Accommodating these projected non-broadcast needs has forced hundreds of LPTV’s to bear the cost of analog channel changes, often to inferior channels. It is time to make all urban TV licensees primary. At a minimum, the Commission should find that urban LPTV’s or translators that undertakes the cost of digitizing to full ATSC capacity are acting in the Public Interest in furthering the digital conversion process. And, that this Public Interest finding warrants a determination by the Commission that the resulting digital television licensees are, therefore, eligible to convert to Class A license status, become primary, and no longer be subject to displacement.

15. Under the proposed spectrum use density categorization system, Urban TV users would pay fees for non-broadcast use of TV spectrum, while such Rural TV use would be feeless. If this new categorization is not adopted, primary licensees, e.g., Class A TV licensees, should pay fees for non-broadcast uses, but secondary licensees, e.g. Translators and LPTV's, should not have to pay such fees. Urban TV licensees would be held to higher technical standard, while Rural TV licensees would enjoy the cost savings of less frequency stability, looser emission masks and continued analog use.

#### IV. DIGITAL LPTV REGULATIONS

16. NPRM at para 24: Comments: The Commission seeks comment on reasons for treating analog and LPTV stations differently. The short answer is that there are no good reasons. There are, however, good reasons to treat primary and secondary licensees differently. And, there are better reasons to treat urban and rural licensees differently.

17. NPRM at para 25. Comments: Full Power Television rules have a "minimum hours of operation" rule. That rule should be amended to specify delivery of broadcast programming and applied equally to everyone, Class C (Full Power), Class A, LPTV, or TV Translators, licensed to an "urban" area. As to the rest of a licensee's time, the Commission should let market forces determine what the spectrum is used for. In other words, let it be used for anything. A similar approach was adopted when the Commission adopted digital rules for the Instructional Fixed Television Service (ITFS). There the Commission ruled that ITFS licensees had to use their non-commercial television channel for the intended educational purpose at least five percent (5%) of the time, and could then do anything they like with the rest of their capacity.

18. NPRM at para 28. Comments: Continued use of 52-59 on a secondary basis will be helpful to LPTV licensees searching for displacement channels, but only if, pursuant to the All-Channel Receiver Act, all digital TV receivers are required to be capable of receiving, off air, up

to channel 59. Otherwise granting new licenses on channels 52 through 59 is a cruel hoax! Furthermore it is time to reverse the Commission's decision, in Dockets 18261 and -2, to let the Private Land Mobile Radio ("PLMR") services use UHF television channels in the top thirteen urban markets. The Commission should now let applicants for digital TV authorizations on channels 14-59 "displace" existing PLMR licensees. The PLMR market has widely been supplanted by cellular radio and PCS. Fleet call, paging, and SMR-type services are all now being offered by PCS providers, at competitive prices, or even as free add-ons to cellular service. Many of these badly needed UHF television channels sit empty the vast majority of the time. The PLMR equipment created for these TV frequencies is antiquated, analog, fully depreciated, sub-standard in capability, over due for replacement and spectrally inefficient. The channels are badly needed for the preservation of existing LPTV service.

19. NPRM at para 30. Comments: Secondary status is a major impediment to LPTV viability. More "secondary" options are counter productive. This option makes sense only in "Rural" areas where primary licensees quite possibly will never use channels 52-59.

20. NPRM at para 32. Comments: The answer is NO. Class A stations provides the same service out to their 64dBu contours that Full Power TV licensees provide. It was inequitable and inconsistent with the intent of the Community Broadcasters Act of 1999 for the Commission to give Class A's less service area protection than other Part 73 licensees. This error should not be perpetuated into the digital TV era. Class A's a/k/a Urban TV licensees should be treated exactly like Full Power stations are now treated, e.g. protected to the digital equivalent of their 64 dBu analog contours. Translators a/k/a Rural TV, should get only "secondary" Grade A (74dBu) contour protection, consistent with the lower value of the spectrum they use. After digitization Class A's a/k/a Urban TV, should be treated just like other Part 73 licensees.

21. NPRM at para 35. Comments: Treat Class A's a/k/a Urban TV the same as other Part 73 licensees. Furthermore, it is time for the Commission to declare a sunset to the protection of unused allotted spectrum. "Use it" or "lose it" should take effect in 2006, if not sooner. The rules should require that Rural TV applicants protect Grade B and equivalent digital contour of any Urban TV authorization. Rural TV applicants should be required to protect the Grade A and digital equivalent of any Rural TV authorization. Any Urban (including Full Power, Class A, LPTV, and urban translator) should be required to meet the interference criteria in Part 73 of the Rules. When determining whether an application is "Rural" or "Urban" the Grade B contours or digital equivalent of Class A stations should be counted when counting signals for determining whether an application should receive an "Urban" designation.

22. The Commission should also make several adjustments in its processing of Urban TV applications. In particular, experience with Longley-Rice demonstrated that several of the UHF "Taboos" can be eliminated from the Rules. When plus and minus 2, 3, 4, and 5, and plus 7 interference is studied using Longley-Rice, the amount of interference found always rounds to zero (i.e., always <.5% of population). These taboos can, therefore, be eliminated from the Rules.

23. NPRM at para 39: Comments: With a negative D/U this high, it appears that the interference predicted will always round to zero. Why have the cost and complication of a rule that never becomes applicable in real life? Over protecting primary TV service wastes spectrum precisely where it is needed most. Much more service is gained than lost by slightly under-protecting primary TV spectrum users. The resultant heavier use of the UHF TV band will open up channel allotments badly needed to preserve existing TV services, and provide some limited opportunity for new comers in the areas most sought after, i.e. the top 100 TV markets. If the

Commission is serious about the conversion to digital, it should not burden the TV industry with new analog protection requirements at this time. Since all urban TV should be primary and digital and only secondary rural TV services should be allowed to continue analog operation, there is no need for DTV-into-Analog protection standards or masks. The Commission should treat Class A TV licensees like other Part 73 licensees, PERIOD! If Urban TV-Rural TV distinction proposed in these comments is adopted, there would be no need for applicants to specify an emission mask. The more stringent mask standards would be automatically applied to Urban TV applications, and visa-versa for Rural TV applications.

24. NPRM at para 42: Comments: The (old) contour protection system should be used for processing digital Translator (a/k/a Rural TV) applications. Longley Rice analysis should be used for processing Class A (a/k/a Urban) applications. If designation of “Rural” changes to “Urban” because of the addition of new Grade B signals or digital equivalents to an area, existing Rural TV licensees should be required to upgrade their transmission plant to Urban TV emission standards, but they will then become eligible to apply for Class A, a/k/a Urban TV licenses. If they elect to remain “grand fathered” as a Rural TV licensee (in a now “urban area”) they would remain secondary and receive only those protections given secondary (a/k/a Rural TV) licensees.

25. NPRM at para 47: Comments: The Commission’s assumption that most LPTV’S use smaller antennas with less gain is not correct. In practice LPTV’s use big, high gain antennas to get reasonable service areas, because they were limited to TPO’s of only 10 Watt at VHF and 1 KW at UHF. Sixteen and 24 bay antennas are common in the LPTV service.

26. NPRM at para 48. Comments: The Commission has frequently made adjustments to its computer implementation of OET Bulletin 69. This has resulted in the return of numerous

displacement and minor modification applications. The Commission should make the software and data base it uses to process applications available on-line immediately.

27. NPRM at para 49. Comments: The Commission should simply use the DTV method for digital Class A (a/k/a Urban TV) applications. The old contour interference method, which worked fine, should continue to be used for digital Translators (a/k/a Rural TV) applications. Interference consents to Class A (a/k/a Urban TV) applications should be accepted without regard to the regularity of viewing of the victim station. When an applicant proposes a new digital Class A TV service the newly authorized service will always exceed the service lost as a result of the agreed to interference, so there will always be significant net public benefit. This is true because Full Power TV “service” and Class A (a/k/a Urban TV) service looks exactly the same to an off-air TV viewer. Conversely, it makes sense to apply the old contour interference method to digital translators (a/k/a Rural TV), since it involves weighing new secondary service against existing primary service.

28. NPRM at para 54. Comments: Asking applicants to get written agreements from their future competitors is near useless assistance, because only one-in-a-thousand (full power) licensees is willing to give this kind of help. Instead, digital Class A’s (a/k/a Urban TV) applicants should merely be required to submit a Longley Rice showing of <5% interference. For translators (a/k/a Rural TV) a waiver request based on D/U analysis is a sufficient showing, since any actual interference will still have to be corrected.

29. NPRM at para 56. Comments: Both of the proposals in this paragraph make sense for the new “Urban TV” service, but are overkill in the new “Rural TV” service. In Urban TV applications, the addition of precise frequency controls, at each licensee’s own cost, should be mandatory. Translators a/k/a Rural TV applicants should be required to make a “no other

Channel” available showing, but then translator applicants should be able to request the addition of (or change of) precise frequency off set to a co-channel license that is blocking its application.

30. NPRM at para 57. Comments: For Urban TV, Joint Commentors hope the Commission will allow such co-location without requiring waiver requests for any type of application. It does not appear to be as critical to make this change for Rural TV application processing.

Nevertheless, in Rural TV situations, if applicant notifies the existing licensee of the need to collocate and provides that licensee with a copy of its technical proposal, the collocation should be allowed. When processing Class A collocation requests the Commission should treat Class A (a/k/a Urban TV) applicants just like other Part 73 licensee, i.e. for Urban TV licenses, applicants should be required to include a digitized vertical pattern in the application. That part of the application should then be added to FCC’s public databases.

31. NPRM at para 58. Comments: Joint Commentors believe that any applicant should be able to require an existing licensee to add precise offset on request and at the expense of the applicant. As for protection of PLMR, the Commission should get them out of UHF band not later than 2006.

32. NPRM at para 59. Comments: For digital translators a/k/a Rural TV, the PLMR protection ratio should merely be adjusted to achieve a Digital Translator-to- PLMR protection ration equivalent to existing analog protection ratio, e.g. 10 dB less.

33. NPRM at para 61(1). Comments: For Class A a/k/a Urban TV, the Commission should merely scale back the rule proportionately to achieve same level of protection. For translators a/k/a Rural TV, no rule is needed if protection is implicit in their “secondary” status. Regarding ERP power limits, high band V should be raised to 10 kW. Second, VHF limits should apply only toward the Radio Horizon, with up to 10dB higher maximum power being allowed at

depression angles of greater than  $-75$  degrees (i.e. w/ negative beam tilt) when this higher power is needed to permit adjacent channel operation of Class A a/k/a Urban, displacement applications.

34. NPRM at para 67. Comments: The Sgrignali 2 mask approach is fully consistent with and fits perfectly in the Rural TV/Urban TV dichotomy. Joint Commentors urge the Commission to adopt this proposal. Under this approach Class A a/k/a Urban TV transmitters would have to meet the stringent mask, while translators a/k/a Rural TV transmitters could be outfitted with a cheaper output filter that merely meets the “simple” mask.

35. NPRM at para 68. Comments: Joint Commentors believe this is primarily a site selection issue, since field experience seems to indicate that output filtering cannot overcome this problem if these two services are co-sited. Joint Commentors have already advocated that the “stringent” filter be required for all Class A a/k/a Urban transmitters. The addition of stringent filters could be required of translator a/k/a Rural TV authorizations if actual interference to GPS receivers occurs.

36. NPRM at para 74. Comments: These Joint Commentors agree that Urban TV licensees should be required to comply with the ATSC transmission standard. Since, as a practical matter, equipment manufacturers use the same digital modulators in full and low power transmitters, this requirement imposes little or no added cost to the digital conversion process. If, upon digitization, every LPTV is converted to digital Class A TV status, it is appropriate that they be required to meet the same technical standards as other primary spectrum users. This is especially true because Urban TV licensees occupy spectrum in areas of high spectrum demand, precluding other desirable uses. If the Commission fails to award automatic primary status to LPTV’s that digitize, it seems grossly inequitable to require conversion to digital at all, let alone requiring

LPTV's to meet the ATSC transmission standards. In that unfortunate scenario, LPTV's, like translators, should be free of any regulation at all except for those designed to limit interference to other spectrum users. Interference to primary spectrum users is implicitly prohibited by virtue of secondary status, so additional regulatory prohibitions would be redundant.

37. NPRM at para 75. Comments: Interference avoidance reasonably dictates adoption of a limit on overpower operation, e.g. no more than 110% of authorized T.P.O. Beyond a prohibition on remaining dark for longer than one year, there is little need for regulating under power operation. A broadcaster has a strong economic incentive to operate at full power. Under power operation occurs not by choice, but because of transmission equipment malfunctions. Licensees fix these problems as quickly as possible without the added pressure of a regulation to tell them they should do so. All such a regulation does is add Commission pressure (to do something quickly) to a stressed out small businessperson already trying their best to do something quickly.

38. NPRM at para 76. Comments: There is no historical evidence that "accidental" overpower operation of digital TV transmitters occurs (ever!). The Commission should wait, study actual problems as they occur, and then regulate to fix those problems in a tailored manner. Rural TV licensees (or secondary licensee anywhere) should be unregulated to the maximum extent possible. Joint Commentors believe that regulations relating to quality of service are extremely inappropriate for licensees that are not protected from summary termination, because they are "merely" secondary. It is arbitrary to, on the one hand, say the service you provide is not worth protecting from subsequently authorized primary service, but, on the other hand, is worth taxing with performance requirements to insure the quality of the service you are providing. Rural TV should be essentially an unregulated service.

39. NPRM at para 77. Comments: The Commission is extending its (analog) requirements that LPTV licensees meet EAS, hearing impaired (i.e. closed caption) and visually impaired transmission standards into the digital TV services by its proposal in this NPRM. Joint Commentors believe that the best and most economical way for the Commission to ensure 100% compliance with these three goals is to require that Urban TV transmitters must be equipped to meet these three capabilities before they can be FCC certified.

40. NPRM at para 78. Comments: This is one of the many areas where the Commission can simplify and rationalize its regulations by better following the Congressional intent of the Community Broadcaster's Act of 1999. The Urban (Class A) TV service should meet the programming requirements of Part 73 of the Rules. No less, and certainly, no more than is required of Class C (i.e. Full Power) TV stations. Rural TV licensees (translators) should have no minimum hour of broadcast operation, programming service requirements or other non-interference related programming standards.

41. NPRM at para 79. Comments: Urban TV transmitters should be regulated the same way any other Part 73 transmission equipment is regulated, e.g. Part 73 transmitters should be certified. For Rural TV transmitters "verification" is a level of regulation more appropriate for the sparsely used spectrum these transmitters operate in.

42. NPRM at para 80. Comments: In general the mixing of analog amplifiers with digital modulators is a transitional problem that will self correct over time. The Commission should adopt interference avoidance standards applicable to all primary spectrum licensees, both large (Class C TV) and small (Class A TV) and let licensees meet those standards any way they want. Joint Commentors suggest that it cost virtually the same dollar amount to manufacture digital equipment that functions at all, as it cost to manufacture digital equipment that meets the highest

standards of performance, since the same chip sets will be used in both cases. Regulations addressing quality are, therefore, unnecessary and wasteful. Market incentive strongly motivates both equipment manufactures and broadcasters to offer and purchase, respectively, fully functional, broadcast quality equipment. Regulating to achieve this already market driven outcome is both redundant and wasteful. Specification of final transmitter performance standards to avoid interference is a sufficient and complete regulatory algorithm.

Regulation of Rural TV equipment sub-components is even less rational. Out in the country where there is almost nobody else to interfere with, why should any standard be applied? If the Rural TV licensee's (e.g. translator's) audience cannot receive (decode) that licensee's signal, the Commission can safely assume that licensee will be "persuaded" to fix the problem without government intervention. And if, in the unlikely event a Rural TV licensee causes interference to another spectrum user, the Commission can safely assume the "victim" licensee will easily identify the "undesired" signal source (from the one or two possibilities in the area) and get that licensee's assistance correcting the problem. Only the barest minimum regulations are needed or useful.

43. NPRM at para 82. Comments: Certainly the Commission is at least equally concerned about Class C TV (full power) stations that operate only sporadically, blocking the use of spectrum by another full power station that did not (yet) receive a digital simulcast channel, or the use of spectrum by a licensee with a digital allotment above channel 51. Yet, the Commission has not found it appropriate to expand the minimum hours of operation now in Part 73 of the Rules (2 hours/day). Urban TV licensees should be required to meet the minimum hours of operation specified in Part 73 of the Rules for primary TV spectrum users. No less and certainly no more. Rural TV users occupy spectrum that is underutilized and abundant. Under

these circumstances, there appears to be no reason to mandate specific minimum hours of operation. Other potential users can easily find alternative channels, or negotiate channel-sharing agreements with existing licensees (in order to spread the equipment costs).

44. TV transmitters are routinely and almost universally equipped with video loss sensors that shut off the final amplifier stages of the transmitter if no video is available. Remote control is a redundant back up to these automatic switches. Joint Commentors see little purpose in mandating this second, redundant capability, absent the Commission having experienced a repeated problem without such a requirement. At a maximum, the Part 73 rule should be applied to Urban TV. Rural TV should be left totally free of regulation in this regard.

45. NPRM at para 85. Comments: The Commission states that the periodic ID requirement grew out of the need for the FCC and foreign governments to easily identify the source of an interference signal. This need is adequately addressed if a station ID's any one of its program feeds. An "every channel" requirement is regulatory over-kill. Besides, most LPTV stations have strong incentive to promote themselves, at least during the local origination portions of their broadcast day. Beyond that minimum, regulations specifying mandatory ID should be limited to requiring an ID only once at the beginning and end of the broadcast day, and not more often. In the case of the 24 hour, satellite fed LPTV's, the Commission should encourage satellite service providers to embed the ID's of its "affiliates" in its satellite feed. This approach is a much better way of ensuring 100% compliance, since many small LPTV's have extremely limited video insertion capabilities. Similarly, in the case of Rural TV licensees (a/k/a translators), if any level of identification is required, it is more logical and effective to require the original signal source to embed the identity of stations repeating its program feed. At most, Urban TV licensees should be required to ID on their digital station only in the manner Class C

TV (full power TV) licensees are required to ID under Part 73 of the rules. Digital translators (a/k/a Rural TV) should only be required to meet the minimum identification requirement specified in U.S. treaties.

46. NPRM at para 92. Comments: Urban TV licensees should, as the NPRM proposes, be allowed to convert to digital as a minor change. Such on-channel conversion authority should not be at the expense of a licensee's right to apply for a digital simulcast channel, as contemplated by the Community Broadcaster Act of 1999. The Commission is years overdue opening a filing window for application for digital simulcast channels for existing Urban TV (Class A) licensees. Once such simulcast licenses are awarded, the Commission should give Urban TV licensees the same length simulcast period it ultimately gives Class C (full power) TV licensees. At the end of this transition period the Class A/ Urban TV licensee should be required to surrender one of its two channels (which one at its election). Class A/Urban TV digital channel applications should be accepted only for channel 2 through 59. Once granted, they should be primary, Part 73 authorizations, subject to all the responsibilities and protections given Class C Full Power TV licensees. Joint Commentors recognize that the implementation of this proposal would use up some of the spectrum freed up by the reallocation of UHF channels 52 to 59 and the requirement that Class C Full Power Licensees turn in one of their two channels at the end of the digital transition period. Nevertheless, fairness, equity and the Community Broadcasters Act of 1999 all require this investment in spectrum to preserve the services of this unique group of small, independent broadcasters.

47. NPRM at para 93. Comments: It makes little sense to subject secondary licensees to auction and no sense to auction secondary and primary authorizations in the same auction. While the Commission is required by statute to use an auction to choose between mutually

exclusive translators, LPTV's and Class A licenses, the Commission is not required to co-mingle these primary and secondary services in the same filing windows, so that inter-status mutual exclusivities arise. The Commission should recognize that urban spectrum is scarcer and more valuable and arrange its service classifications accordingly. Applications for secondary licenses should be restricted to rural areas, and not permitted in urban areas. Digital TV windows should be tailored to allow either Rural (translator) or Urban (Class A) and for the remainder of the analog era, but never both in the same window. Then, mutually exclusive Urban TV (Class A/LPTV) applications can be decided by auction - just like any other Part 73 application contest! Rural (translator) applications should be decided by auction as well, but the pre-auction settlement period should be not less than six (6) months long, and applicants should be allowed to amend to a different channel (at the same tower site) to break the mutual exclusivity.

48. NPRM at para. 95: Comments: The use of auctions to resolve mutual exclusivities among Urban Class A/LPTV digitization applications is an unfortunate means of resolving these contests, since only one of the two or more applicants at each "node" in the "MX chain" can win the auction and go to grant. When the Commission sought to encourage the transition of the Class C, Full Power TV services to digital it avoided auctions by using Commission (i.e. public) engineering resources to avoid mutual exclusivities and assign each Class C TV license a digital channel. If the Commission does not, out of a sense of fairness and equity, extend the same universal assistance to Class A/LPTV licensees serving urban areas, it should at least do so to resolve mutual exclusivities among digital TV applicants seeking urban authorizations.

49. NPRM at para 97. Comments. TV translators outside of urban areas, i.e. the Rural TV service, do not face the spectrum shortages threatening the survival of Urban TV licensees, including Class A, LPTV and Urban translators. The best way to ensure survival of translator

services is to restrict translator applications to rural areas, keep them secondary, subject them to the least regulation practicable, and immediately allow them to apply for both analog and digital applications for service to rural areas only, on the basis of one day, rolling filing windows.

50. The easiest, fairest, surest, and wisest way for The Commission to encourage the preservation of existing urban translators, LPTV (and Class A TV) services is to make every urban digital construction permit a digital Class A authorization. If secondary status licenses are asked to spend the money necessary to find a digital channel in these crowded markets (or give up their analog viewers by converting on channel), and to make the enormous investment needed to construct a digital transmission plant, they must receive a guarantee that their digital stations will not be subject to displacement. No other outcome is rational.

51. NPRM at para 98. Comments: The Commission should avoid the insurmountable difficulties that will result from mutually exclusivities between secondary and primary service applicants by restricting its proposed all-digital filing window to applicants now serving urban areas, be they translators, LPTV's or Class A TV's, and then treating all such applications as an application to convert to the Urban TV (i.e. digital Class A) service. All applications granted in that window would be primary. If auctions resulted, the bidding would be among applicants for equal status, primary service authorizations. If an auction winner, thus, pays for its digital channel, that (now) primary authorization would be displacement-proof. To ask applicants to bid in auctions for authorizations that could subsequently be displaced is capricious. Awarding primary status to all digital (urban) applicants is the only, obvious, logical and best solution. Rural (translator) applications could remain secondary, because channels with which to resolve mutual exclusivities will be abundant. No applicant will have to go to auction, because "MX'd" contests can be "settled" by a now permissible channel change by one or more of the applicants.

In the unlikely event auction are held, subsequently displaced auction winners can simply change channels via a “priority “displacement application that is not subject to auction.

52. NPRM at para 100. Comments: Joint Commentors agree with the Commission’s digital only window proposal with the proviso that it should exclude rural (i.e. secondary) area applicants. There will, nevertheless, be mutual exclusivities. The Commission can greatly assist the small businesses that make up this sector of the broadcast industry by making the computer program (and databases) that the Commission uses to determine mutual exclusivity available, on line, e.g., on the LPTV page of the FCC web sit.<sup>1</sup>

53. NPRM at para. 100. Comments: The Commission restricted eligibility to the Expanded AM band authorizations. The Commission restricted eligibility to some “FM Docket 80-90” allotments. The Commission restricted eligibility for applications to certain geo-stationary satellite slots. It is beyond question that the Commission can, consistent with *Ashbacker*, restrict applicant eligibility to a particular, defined class of applicants. In this case, that restriction should be to limit the digital only filing window to existing authorization holders proposing primary digital service in an “urban” area.

54. NPRM at para. 108. Comments: One day filing windows have worked well in several Commission services. After the first window-day the number of “MX’s” is usually small, processing backlogs are reduced because the Commission’s work load is evened out, and the engineering of interference free applications is easier because the Commission’s data bases are more up to date. The one effect of one day windows is that it becomes critical that the Commission quickly include each days filings in its public data base and make its programs for determining interference avoidance of those “cut off” applications available on-line. Only then

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<sup>1</sup> Joint Commentors are requesting that these computer programs be made available in an on-line, useable format, since few licenses have the skills or resources to rewrite the programs to operate on their personal computers.

can prospective applicants check their applications before filing for interference to a recently filed, cut off application. Any such window should permit either primary-urban or secondary-rural applications, but not both, so that the Commission does not have to put primary and secondary service applicants into the same auction.

55. NPRM at para.109. These Joint Commentors have above described what they believe should be the Commission’s approach to licensing digital channels for analog translator, LPTV and Class A authorization holders. The same considerations that warrant separate rural and urban services for digitizing existing licenses apply to new digital authorizations. If an application is for an “urban” area, it should be a Part 73, digital Class A application. If it is for a “rural” area, it should be a Part 74, digital translator application. Such digital Class A applications would take precedence over digital Translator applications. There would be no digital, secondary service authorizations in urban areas and no primary service authorizations in rural areas. Auctions would be among like value applicants and auctions for rural authorization would almost always be settled by permitted channel changes. Rural LPTV’s would become secondary, digital Rural TV licensees, as would digital translators. Urban LPTV’s and translators would become primary, digital Urban TV licensees. Part 73 applicants (Urban TV’s) would continue to take precedence over Part 74 (Rural TV’s) applicants as in the analog world. On-channel conversion to digital would be into the appropriate service (Urban/Rural) and status (primary/secondary) depending on location. Joint Commentors believe that these category restrictions fully comport with the requirements of *Ashbascker*.

56. NPRM at para. 116. Comments: The construction period for Class A digital (a/k/a Urban TV) applications should be the same as other Part 73 TV (i.e. Full Power) construction permits, three years with extensions only in special circumstances allowed by the Commission for Full

Power DTV permittees. Applications for digital Class A or Urban TV authorizations should be on a FCC form 302A, while applications for rural translator or Rural TV authorizations should be on FCC form 346.

57. NPRM at 120. Comments: Given the extreme shortage of spectrum for digital TV in most TV markets, the Commission should no longer recognize Full Power TV station contours beyond those actually served by the primary station's transmission plant. It would be manifestly unfair to authorize digital boosters when existing LPTV and Class A stations can not find displacement or digital conversion channels in many locations. The concept of fixed TV allotments, when each subclass of Part 73 station was protected as if built to the maximum authorized power and height is a historical artifact of an era when TV applications were processed with manual interference calculations. The Commission should not "waste" spectrum now that computers permit the precise analysis of each station exactly as it was actually constructed. If a Full Power TV licensee wants to serve areas beyond that reached with their primary authorization, they should have to file either digital Class A (Urban TV) or digital translator (Rural TV) applications, in fair competition with other would be spectrum users, and, if necessary, place the winning bid for that spectrum.

58. NPRM at para.123. Comments: Class A digital stations should have the same "-DT" suffix used by other Part 73 television licensees. Digital translators need no special designation, since no particular digital modulation format is mandated for these rural, secondary spectrum users. Translators that convert to digital may convert back to analog at any time, so a digital specific suffix is inappropriate.

59. NPRM at para 124. Comments: Maintaining the level of existing fees after conversion of these services to digital is appropriate given the maintenance of relative station size between the

Full Power and LPTV/Class A services, with a few minor exceptions. The fee for Special Temporary Authority (“STA”) letters and renewal of STA’s is the same, even though the processing of STA renewals reuses the STA data already processed by the Commission for initial STA request. The fee for STA renewals should be significantly lower, e.g. \$25.00. Similarly, the fee for Rural TV applications, i.e. digital translators serving “rural” areas, involves significantly simpler interference analysis than Urban TV applications, i.e. digital LPTV and Class A applications serving “urban” areas (LPONE contour analysis vs. Longley-Rice percentage of population interfered with analysis). The fees for digital translator/Rural TV applications should be significantly lower than the fees for digital Class A/Urban TV applications, perhaps by factor of 50%.

60. NPRN at para. 126. Comments: Joint Commentors suggest that every urban LPTV should be converted to primary status when its digital construction permit is granted. Once digitized these now Class A television stations should enjoy equal treatment with other Part 73 licensees. Accordingly their use of the BAS frequencies should be on the same basis as use by Class C television stations. If the full power use of BAS frequencies is primary, then digital Class A use should be primary also. It seems reasonable that secondary spectrum users, like digital translators should use BAS frequencies (only) on a secondary basis. These Joint Commentors only add that the secondary use of any microwave band should be authorized for digital translators, given the low license density found in rural areas.

61. NPRM at para. 128. Comments: Given the abundance of spectrum in truly rural areas, there appears to be little need for the special protections sought by the Public Broadcasting Petitioners (“PBP’s”), particularly if these Joint Commentor’s proposal for a new Urban TV/Rural TV regulatory structure is implemented by the Commission. These Joint Comments

have also expressed their reservations over the proposal to permit digital boosters. Digital booster authorizations appear to be an inequitable monopolization of scarce spectrum by the largest television stations at the expense of the small licensees most in need of that spectrum. Joint Commentors believe the Commission should help all displaced Part 74 licensees whether commercial or noncommercial, on an equal basis, without making a judgment that one programming format has a higher “value” than another. Similarly, the Commission should help all Part 74 licensees convert to digital, just as it helped all Part 73 licensees convert without regard to their programming format. Joint Commentors accordingly support those PBP proposals consistent with these comments. Joint Commentors have already opined that digital translators (a/k/a Rural TV licensees) should be free to use any modulation format they elect, and should be free to switch back and forth between digital and analog at will, on a non interference basis. Accordingly, we support those PBP proposals consistent with these comments. Joint Commentors have also opined that digital booster authorizations are not fair or appropriate use of urban TV spectrum. Accordingly, Joint Commentors opposed the Commission’s acceptance of any of PBP booster or on-channel repeater proposals.

## VI. CONCLUSION

Most LPTV licensees feel that the Commission played a cruel joke when it created the LPTV service. They thought the Commission was creating an opportunity for small businesses, women, and minorities to more meaningfully participate in the television broadcast industry. And they thought LPTV licenses would be an efficient means of delivering specialized programming to underserved urban minorities and local service to cities too small to support a full power television station. Instead, it appears that the LPTV service was so handicapped by unsupportive regulators, so boxed in by limiting statutes, and so out-lobbied by the cable TV and

Full Power Television industries, that serving their targeted audience or succeeding financially is nearly impossible. This NPRM presents the Commission with a historic opportunity to correct past sins, adjust its regulations to reflect the tremendous value this diverse and energetic group of licensees have demonstrated the LPTV service has, and ensure the meaningful participation of this almost totally small business owned, heavily minority and female owned and managed, numerically diverse group of licensees in the ownership of this Nation's future (digital) telecommunications industry.

Respectfully submitted,

**JOINT COMMENTORS**

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