

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

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

To: The Commission

REPLY COMMENTS OF COMMERCIAL BROADCASTING CORP.

Commercial Broadcasting Corp. (CBC) hereby submits these reply comments in the above mentioned proceeding, FCC 03-198, released August 29, 2003, in which the Commission seeks to establish a regulatory framework for the conversion of low power television stations (LPTV) and television translator stations to digital operation. CBC operates four Class A stations and one LPTV station all of which are located in the nation's top 25 markets. CBC appreciates the Commissions past efforts to support the

LPTV industry and appreciates the effort the Commission has made to examine the digital transition for Class A and LPTV stations in such detail.

CBC agrees with comments of the Community Broadcasters Association (CBA) that Class A and LPTV stations should make the transition to digital operation in an orderly and efficient manner. That incentives should be provided to encourage the construction of digital facilities. That 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 and that 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.

Applications for a Second Channel. CBC agrees with the CBA's comments that there is no question that Class A/LPTV stations should be permitted to apply for a second channel for digital operation. "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 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." The CBA is correct in its assumption that "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. The vast majority of any LPTV stations audience is already divided between cable, satellite and broadcast due to lack of

must-carry. Flash cutting between digital and analog on a single channel would so reduce this already fragmented audience as to make LPTV stations no longer economically viable. Further, flash cutting has the potential to both so confuse and annoy the entire broadcast audience it may have the unintended consequence of fostering their retreat from the medium entirely. 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 and entirely consistent with serving the public interest.

CBC disagrees with the comments of MSTV and the NAB regarding their reasons to withhold a second digital channel from LPTV stations. They state, “In upcoming years the Commission faces the daunting task of ‘repacking’ television broadcast stations... into channels 2 through 51. This... is further complicated by other broadcast services like Class A, LPTV and translator stations. The Commission should not make the challenge of accommodating the transition of all full service stations even more difficult by further congesting broadcast spectrum with second channel grants to Class A, LPTV or translator stations.” The NAB and MSTV do not make any mention of the fact that despite their contention of congestion there are currently enough channels available for all “full service” stations to have received a second digital channel with enough channels remaining to accommodate almost all LPTV stations and translators. Indeed if there are now no remaining channels due to “congestion” why expend the energy to lobby against second channels for digital LPTV at all? In truth the digital transition is well on its way. At the end of the transition all full service stations will have to give back their second

channels, should LPTV be granted temporary second channels for digital service those will have to be returned likewise and even considering the “repacking” there should be more than enough channels for all. Still, if not, the secondary nature of the LPTV service will assure channels for all full service stations.

Eligibility to File for Second Channels. The CBA writes, “The Commission has often recognized the importance of preserving existing service over the benefits of new service. 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 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.” CBC agrees with the CBA’s views in the matter with the exception that CBC believes Class A stations should be able to file for digital channels before other classes of LPTV due to their primary status.

Preservation of Class A Primary Status. CBC strongly agrees with the CBA’s position which states, “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”). 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 incore) is primary; nor must it be forced into a position where at the end of the transition, it ends 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. 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.”

Constraints on Applications. CBC supports the CBA’s position, “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. 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.” CBC believes there should be no exception to this constraint

regardless of a stations inability to find a digital channel which overlaps its analog contour.

Minimizing Mutual Exclusivity. CBC supports the CBA's position regarding resolving mutual exclusive digital applications. CBC also believes all Class A, LPTV and television translator stations should be required to operate with a carrier frequency "offset" for its NTSC operation. This will permit minimization of interference and maximization of service. Furthermore, a new offset for a station which had no previous offset can: (1) foster a reduction in interference to other existing LPTV stations which could not be offset with it before; (2) permit increases in the facilities of stations previously not offset with each other (i.e., service improvement); and (3) permit new LPTV service to areas that were previously precluded due to the more restrictive D/U ratio. Hence, LPTV stations using offset, foster spectrum efficiency in an age of diminishing spectrum availability and increase TV service to the public which is clearly in the public interest. CBC believes all stations currently operating without a carrier frequency offset within the top 100 markets be given a relatively short set period of time to both declare and install said "offset" at their expense.

Construction Period. CBC agrees with the CBA's position that, "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 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.”

On-Channel Conversion. CBC agrees with the CBA’s position that, “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.”

CBC strongly disagrees with the NAB and MSTV position which states, “... full power broadcasters that could be affected by Class A, LPTV or translator stations applications to convert to digital on channel should receive written notice of such applications prior to their filing and Class A, LPTV or translator stations applicants should be required to certify in their applications that such notice has been provided. ... and applicants should be required to provide notice at least 60 days before filing applications.”

CBC feels this notice will be used by full power stations to file objections to their digital conversion merely to delay LPTV stations conversion to digital in order to limit competition while providing no benefit whatsoever to the viewing public. LPTV stations currently are required to protect full power stations from interference and full power stations have the power to petition the Commission to have the offending station immediately cease broadcasting should such interference arise. Further it places an undue burden on the limited resources of LPTV stations during a time when many can least afford it again without any benefit to the viewing public. CBC feels the act of filing a minor change application which will be a matter of public record it is enough notice.

Technical Flexibility. CBC agrees with the CBA's position that, "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. 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.

CBC disagrees with the Reply Comments filed by Zenith stating. " These considerations factored into the Commission's decision in 2001 to reject any modification of the DTV transmission standard. They hold even more weight today, three years later, as the DTV transition nears completion. Some 1,200 DTV stations are now on the air; millions of DTV products have been manufactured and sold; and the quantity of DTV programming available to the public is steadily increasing. Allowing Class A and LPTV stations to utilize - or even experiment with -alternative DTV transmission systems would produce little if any benefit to the television viewing public, but at this late date would almost certainly result in serious and lasting disruption and delay in the realization of a nation-wide digital television system."

Zenith contradicts itself. If, as they state, " 1,200 DTV stations are now on the air; millions of DTV products have been manufactured and sold" and " the DTV transition nears completion" there would be little harm and perhaps great benefit to the viewing public in allowing LPTV stations to experiment with alternative ways to deliver programming.

Indeed one can only imagine what new services the future may hold, to cease to develop such new services risks the possible obsolescence of terrestrial broadcasting especially as there is no such restrictions on its major competitors. The markets and the viewing public will be better judges of the success of any such experimentation than manufacturers with obviously vested interests.

Service Flexibility. CBC agrees with the CBA's position that, "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. 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, 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. 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.

Here, once again, both the NAB and MSTV seek to hobble as best they can LPTV stations ability to compete in a constantly changing broadcast environment. What good would it do the viewing public if, as they state in their Comments, “Digital LPTVs should be authorized to provide one way video services only... and that class should not be expanded at this time.” When does the NAB and MSTV think the time will be right to provide flexible services? I’d venture a guess it would be just after they “maximize” LPTV out of existence. I believe I’m not just being paranoid (a somewhat constant mental state for a LPTV operator anyway) when in their Comments the NAB and MSTV state, “Class A stations converting on channel to DTV should be subject to the same service rules and protections as analog Class A stations, *including the possibility of being displaced to permit full power stations to transition their maximized facilities to a final digital channel.* I would like to take this opportunity to express my opinion that a more permanent status than Class A for LPTV stations is long overdue.

Hours of Operation and Simulcasting. CBC agrees with the CBA’s position that, “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. 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. 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. 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. CBC believes the market as dictated by the tastes of the viewing public would be the best judge of what programming should be permitted on LPTV stations digital channels.

Protection Standards. CBC agrees with the following Comments filed by the firm of du Treil, Lundin & Rackley, Inc. (dLR), including:

1. Use of channels 52 through 69 for operation of LPTV should be permitted until displaced by other authorized services.
2. CBC believes that the protected signal contours for digital Class A stations adopted in the Class A TV proceeding are also appropriate for digital Low Power and TV translator stations.
3. CBC believes that since the DTV-NTSC desired-to-undesired (D/U) interference ratios for taboo relationships (+/- 2, 3, 4, 7, 8 and -14 & -15 channels) are already considered in the OET-69 programs, and because it is believed the required ratios will have minimal impact on channel availability, the D/U ratios for taboo channels should be applicable to digital LPTV and TV translator stations.

4. CBC believes that in order to maximize opportunities for digital LPTV and TV translator stations, the Contour Protection Methodology currently used for analog LPTV and TV translator stations be adopted for digital LPTV and TV translator stations. However, it is recommended that the maximum ERP at any horizontal and vertical angle be considered (i.e., not the radio horizon ERP). In addition, it is believed that when contour protection cannot be afforded, applicants should be permitted to employ the OET-69 Method without requiring a waiver. CBC also believes the actual vertical antenna pattern (i.e., elevation pattern) and the maximum ERP at any horizontal and vertical angle should be considered when employing the OET-69 Method.
5. CBC believes that the DTV Prediction Model needs to be modified such that more appropriate vertical antenna patterns are employed when analyzing digital LPTV and TV translator station interference potential. The default vertical patterns currently assumed in OET Bulletin No. 69 may be appropriate for full-service TV stations, however, they do not reflect typical LPTV and TV translator antennas. Therefore, it is proposed that that DTV prediction model be modified to incorporate actual vertical antenna patterns proposed by digital LPTV and TV translator applicants.
6. CBC believes that the revised version of OET Bulletin No. 69 should be applicable to analog LPTV and

translator stations, however, facilities that are already authorized should be grandfathered. Additionally, OET-69 only considers cross-modulation interference and not intermodulation interference. It is recommended that the model be revised for consideration of intermodulation interference.

7. CBC believes that in order to facilitate channel availability, adjacent channel co-location should be permitted. In addition, interference analyses should be based on the OET-69 Method. Applicants should demonstrate that the required desired-to-undesired (D/U) ratio is met using the actual vertical antenna pattern along with the maximum ERP at any horizontal and vertical angle. It is proposed that a distance of two (2) kilometers to be used in defining co-located facilities.
8. CBC believes that applicants *should be* permitted to use multiple emission masks, tthe OET-69 Method should consider the emission mask utilized for adjacent channel interference analysis.

Conclusion. The LPTV industry is and always has been beset on all sides by competition, more so now than ever before. Today the viewing public has an incredible variety of entertainment options unheard of the day the first LPTV station began broadcasting including digital cable, direct broadcast satellite, the internet, DVDs, pay

per view, video on demand, video games, etc. In spite this incredible array of choices LPTV has continued to survive and prosper.

How is this possible? It is possible because LPTV stations carry more local and niche programming and have the greatest representation of local, small business, minority, and female ownership and management than any other class of mass media service. It is possible because the thousands of people involved in LPTV dedicate every working day to the continued success of their enterprises. The public interest strongly requires the Commission make a special effort to enable LPTV stations to survive by promoting policies which will allow our stations to successfully make the transition to digital.

I complement the Commission for the job it has done to promote Class A/LPTV so far and implore it to continue to help us fulfill our vision of local service by allowing us to offer our viewers opportunities for programming they need in the format our viewers decide is best for them.

Respectfully submitted

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