

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

REPLY COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

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SUMMARY

The Community Broadcasters Association (“CBA”) was encouraged by the large number of comments filed in support of the Commission’s desire to adopt an equitable and efficient scheme for Class A and Low Power Television (“LPTV”) stations to make the transition to digital operations. The CBA is disappointed with comments raised by certain full-power broadcasters, and in particular the Association of Maximum Service Television and the National Association of Broadcasters (“MSTV-NAB”), which completely ignore the significant local, rural and minority programming that the Class A and LPTV industry have brought to the broadcast industry. Their position would prevent any meaningful digital transition before it had a chance to even begin.

1. The Commission must not delay the initiation of the digital transition for LPTV and Class A stations, as the full power transition is far enough advanced that it will not be disrupted. At the same time, the Commission must also allow for a long enough period of time for all Class A and LPTV licensees to find a second or primary channel for digital operations, which in certain instances will only be possible once full power television stations have relinquished their second channels, and which will likely not occur until the end of the transition.
2. The Commission must allow LPTV and Class A stations to apply for and receive second channels. A flash-cut from analog to digital only operations would be suicidal, particularly because so many Class A/LPTV stations have no cable carriage rights, and none have satellite carriage rights. The Commission has the statutory authority to accept and grant such second channel applications. No legal obstacle exists to prevent the

authorizing of such second channels to LPTV stations on a secondary basis, and to Class A stations on a primary basis.

3. The Commission should not constrain LPTV/Class A stations from filing for temporary digital operations on Channels 52-69. LPTV/Class A stations are well aware of the risks associated with such temporary operations, as they have been subject to displacement process from full power television stations. To disallow such temporary operations would create an unnecessary obstacle to LPTV/Class A digital operations and would prevent an efficient use of spectrum that would otherwise lie fallow.
4. CBA supports the Commission's interference protection standards for LPTV and Class A digital operations, as they strike the proper balance between protecting full power digital operations and promoting the LPTV/Class A digital transition.
5. The Commission must allow for a period of time during which mutually exclusive applicants for Class A/LPTV digital service are given a chance to resolve such exclusivity, either through financial, engineering, or other relevant solutions.
6. Just like full power stations, Class A and LPTV digital stations must be given opportunities to make use of the digital spectrum to offer ancillary and innovative digital services, even if the Commission imposes at least one free video programming service on digital LPTV/Class A licensees.

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Introduction

1. The Community Broadcasters Association ("CBA"), the trade association for the nation's Class A and Low Power Television ("LPTV") stations, hereby submits its reply comments in the above-captioned proceeding. CBA notes the large number of comments filed in support of the Commission's plans for a prompt and fair transition for Class A and LPTV stations to digital operation. It is disappointing, however, to read the comments of the Association of Maximum Service Television and the National Association of Broadcasters ("MSTV-NAB") and some (but not all) other full power television broadcasters, who persist in demanding impractical approaches that pay no heed to the local programming, diversity of ownership, and rural and minority services that Class A and LPTV stations provide to the nation. Their proposals would be more likely to destroy Class A/LPTV broadcasting rather than facilitate a smooth transition to the digital era.

2. The fundamental principles that the Commission must follow in this proceeding are these:

a. The transition by Class A/LPTV stations must start now, as part of the nationwide effort to phase out analog television. There has been more than ample opportunity for full power TV stations to seek modified allotments and maximized facilities. However, the transition must also be spaced out over time, so that those stations that cannot find digital channels initially will have a priority opportunity to do so after full power stations have relinquished one of their paired channels.

b. Second channels must be authorized, as flash-cut to digital will be suicidal unless it is postponed to the end of the transition, and maybe even then the Commission has clear statutory authority to both accept and grant applications for second channels for Class A television stations, including on a primary basis; and no legal obstacle exists to authorizing second channels to LPTV stations on a secondary basis.

c. The interference protection standards proposed by the Commission, with the slight technical changes proposed by CBA and various broadcast engineers, are more than adequate to protect the rights and service areas of full-power television stations.

d. There is no reason to block access to the Lower and Upper 700 MHz bands on a secondary basis, no matter how soon auction winners may be ready to exploit that spectrum.

Timing of Transition

3. The transition to digital operation must not be delayed. Certain commenters argue that it is premature to begin the Class A/LPTV transition now, because the Commission should focus its resources on completing the transition for full power digital television stations and resolving cable television digital must carry rights. In light of the goal of completing the entire

move to digital operations by the target date of December 31, 2006,¹ it is unrealistic to leave any class of station out of the process now, in what will soon be 2004.

4. The initial DTV Table of Allotments was promulgated more than *six years* ago, and full power licensees have had more than enough time to file for digital facilities modifications or allotment changes.² As of October, 2003, 95% of commercial TV stations have been issued DTV construction permits, and 75% were on the air.³ Contrary to the assertion of MSTV-NAB,

¹ The deadline is the later of December 31, 2006, or the date when at least 85% of the households in a given station's market are capable of receiving the signals of digital broadcast stations. *See* 47 USC Sec. 309(j)(14).

² It is important to note that even primary Class A stations must protect full power DTV stations that must change channels because of technical problems (*see* 47 USC Sec. 336(f)(1)(D)) or who filed timely maximization applications (*see* 47 USC Sec. (f)(1)(D)(ii)). Thus full power station claims that they may not be able to transition successfully because of Class A/LPTV stations are hollow.

³ *See DTV Transition Moving Forward*, FCC News Release (released Oct. 23, 2003).

the digital transition is not at a crossroads but instead is nearing the finish line.⁴ Now is the time for LPTV and Class A television stations to join the process.⁵

5. The transition must start now but must also be extended over a period that goes somewhat beyond the end of the transition. As discussed further *infra*, some Class A and LPTV stations find it difficult, or even impossible, to find a second channel for digital operation. They must be given the opportunity to apply for channels relinquished by full power stations at the end of the transition before any relinquished channels are opened up for new TV stations (full or low power) or other permitted uses (if any).

Second Channels

6. Second channels for digital operation are essential. As noted in CBA's initial comments, LPTV stations not only are secondary but also face difficult obstacles to obtaining carriage on cable/satellite systems, the way in which most viewers receive their programming.⁶

⁴ Paxson Communications Corporation's argument that the full power digital transition is still in fluid form because many DTV stations are operating under special temporary authority ("STA") is not valid, because the Commission has already established deadlines by which such stations must "use or lose" the right to operate at higher power (currently proposed to be for July 1, 2005, for the top four network affiliates and July 1, 2006, for all other commercial and noncommercial DTV licensees). See *In the Matter of Second Periodic Review of the Commission's Rules Affecting the Conversion to Digital Television*, 18 FCC Rcd 1279, at para. 25 (2003). Class A/LPTV stations must protect the higher powered facilities, but only until those deadlines. The fact that some full power stations will ultimately increase power and others may not is not a reason to defer initiation of the Class A/LPTV conversion process.

⁵ CBA agrees with the comments submitted by Fox Television Stations, Inc. that any unopposed applications for new digital low power or translator stations should be processed promptly, both to promote the transition and to make it clear that those who apply must be serious about constructing and operating digital facilities.

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Most LPTV and Class A stations serve rural areas or underserved urban markets, where digital set penetration will likely occur at a slower pace than with larger audience groups. A second channel for ramp-up, to attract viewers to the digital operation while maintaining the analog operation essential for economic support, is at least as important, if not more so, to Class A/LPTV stations as to full power stations. Those who oppose a second channel are not being realistic but rather are in effect proposing a scheme to ensure the economic demise of the Class A/LPTV industry. While that is a goal that some may in fact have, it certainly does not justify support by an agency whose charge is to advance the public interest and to bring expanded media services to the public.

7. CBA supports the Commission's aggressively pursuing full power stations to provide a clearer picture as to what spectrum they will need and will use when required to terminate analog operations. Full power stations must now not be allowed to delay further and to stall their own digital transition by attempting unfairly to block other broadcasters who are ready to make their own transition to digital operations.

8. The fact that the Commission decided not to award second channels to Class A stations in 2000 does not dictate what course of action should be taken over three years later, in light of the significant initiation of DTV operations by full power stations.⁷ The Commission

⁶ Indeed, although Class A stations do receive primary spectrum status, they have only the same very limited must carry requirements that low power stations have, making it just as difficult for them to obtain carriage.

⁷ In fact, MSTV-NAB mischaracterizes the priority between full power and Class A stations when addressing changes proposed by full power stations to their digital operations. Class A stations are not to "give way" to all full power stations making the digital transition. Instead, Footnote continued on the next page

stated in the *Class A Reconsideration Order* that it would “defer matters regarding the issuance of additional DTV licenses for Class A stations to a future DTV rulemaking.”⁸ In other words, it was not, as MSTV-NAB argue, “if” a second digital license could be offered to low power stations but only “when” that might happen. It is thus fully appropriate and consistent with past decisions to initiate the anticipated rule making and to decide the second channel issue at this time.⁹

9. The fact that the Community Broadcasters Protection Act of 1999 is silent with regard to digital authorizations for LPTV and TV translator stations does not mean that the Commission lacks authority to provide such an opportunity under its general statutory licensing powers.¹⁰ On the contrary, well-established public interest objectives to improve the technical quality and spectrum efficiency of television broadcasting would be advanced. The grant of a second

changes to digital facilities and channel operations that would negatively impact existing Class A stations are permitted only to resolve “technical problems,” and then only to achieve replication or to achieve maximization when a timely application was filed. *See* 47 USC Sec. 336(f)(1)(D). Even in the case of secondary LPTV stations, the Commission has stated that care must be taken concerning the “impact of DTV implementation on low power services, especially the impact with regard to LPTV stations, and believe it is desirable to take certain steps to minimize the impact on those stations.” *See Advanced Television Systems (Sixth Report and Order)*, 12 FCC Rcd 14588, at para. 142 (1997).

⁸ *See* 16 FCC Rcd 8244 at para. 81 (2001).

⁹ MSTV-NAB’s reliance on Section 334(f)(4) of the Commission’s Act as a way to prevent the FCC’s ability to authorize a second channel is misguided. As noted in CBA’s initial comments, to require the FCC to “accept” digital applications, but not “process or grant” the application imputes an illogical intent to Congress and is certainly not supported by the plain language of the statute.

¹⁰ *See, e.g.*, 47 USC Secs. 154(i) and 303(a)-(k) and (r).

channel opportunity is the best, if not the only, way to stimulate digital set penetration, to maximize the public interest through continuation of incumbent services and voices, and to help avoid a sudden flash-cut loss of analog service in markets that might not be prepared for a complete digital transition. Class A/LPTV incumbents, often the only local voices that provide important news, weather, emergency and other pertinent local information in small or niche markets, must not be ignored by an increasingly consolidated full power industry that seeks to prevent the survival of competitive local voices that have proved their value in the media marketplace.¹¹

Out-of-Core Channels

10. CBA agrees that that many Class A/LPTV stations will have difficulty finding “in-core” channels (Channels 2-51) for digital operation and therefore reiterates its support for the Commission’s tentative conclusion that temporary digital operations must be permitted on Channels 52-69. There is no reason to impose a constraint on the use of those channels that will leave spectrum lying fallow for even a short period of time. Commenters like the 700 MHz Advancement Coalition, who complain that they do not want to have to face the burden of asking Class A/LPTV stations to move off channels they have purchased at auction, are really saying that spectrum should be left fallow because they are afraid of the process of exercising a right

¹¹ CBA supports the point raised by Venture Technologies Group, LLC (“VenTech”) that the Commission should also act on the pending rule making that would eliminate the loophole that exists in the Commission’s program exclusivity rules, to allow Class A and LPTV stations the right to exercise program exclusivity. *See* Comments of VenTech at 3.

that no one disputes they will have.¹² The value of spectrum lies in time as well as in bandwidth. A channel not used today can never be recouped in the future. It would be wasteful not to permit the use of out-of-core channels for transitional DTV operation, subject of course to the rights of auction winners who actually provide service to the public to be protected from interference. In other words, if there is a “chilling effect,”¹³ it is generated by the auction winners themselves and not by Class A/LPTV stations, who are accustomed to dealing with the displacement process, even if they do not like it.

11. The Commission itself observed that: “[f]urther, we believe that new service providers [in the lower 700 MHz Band] may be able to co-exist more easily with digital television stations given that such stations operate with lower power and their signals may generally be less susceptible to interference than analog television signals.”¹⁴ The scenario of secondary use and the disruption that comes from displacement is a necessary part of efficient and timely use of the spectrum and is absolutely necessary here to avoid leaving an undue number of Class A/LPTV stations with no realistic opportunity to develop digital service.¹⁵

¹² Any concern that the public may object to losing established TV service only reinforces CBA’s point about the value of Class A/LPTV services to the community. However, once a decision has been to reallocate spectrum, the Commission has not hesitated in past situations to move forward in the past with mandatory relocation. CBA is aware of auction winners already aggressively notifying LPTV/TV translator stations that they must shut down, even in rural areas where there is no evidence that construction of auction-won facilities is imminent.

¹³ See, e.g., Comments of Qualcomm, Incorporated.

¹⁴ *Reallocation and Service Rules for 698-746 MHz Spectrum Band*, 17 FCC Rcd 1022 at para. 45 (2002).

¹⁵ Cavalier Group, LLC (“Cavalier”) completely confuses the issue as to why a period of time
Footnote continued on the next page

12. In sum, rather than closing off Channels 52-69 immediately, the Commission must rely on interference standards and priorities that are already in place and let the market dictate whether Class A/LPTV operators who need to do so will elect to use out-of-core channels on a temporary basis.¹⁶

Interference and Protection Standards

13. The interference and protection standards proposed by the Commission are adequate to protect full power digital operations. CBA reiterates its support for the use of prohibited overlap of interfering and protected contours as a method for determining the acceptability of proposed digital assignments proposed Class A and LPTV applicants. Also, the use of the OET Bulletin 69/Longley-Rice method, which most commenters agree provides a more accurate reflection of terrain-based effects on signal coverage, should be permitted without requiring a rule waiver. These positions received the overwhelming support of the engineering community, with only minor changes in DTV/NTSC desired-to-undesired (D/U) ratios.¹⁷ Against such

for dual analog/digital operations is essential for the survival of Class A/LPTV stations. While it is true most viewers receive their full power TV broadcast services via cable or satellite delivery, LPTV and Class A television stations, which may end up as one of the last bastions of over-the-air broadcasting because they have very limited cable and no satellite carriage rights, offer a selection of network, minority, and other niche programming that frequently is otherwise unavailable. Cavalier's argument as to the lack of a need for additional digital programming in rural America is unsupported and is contrary to the facts.

¹⁶ The Commission should clearly not establish any absolute requirement that would force a Class A/LPTV station unable to find an in-core digital channel to operate out-of-core on a compulsory basis.

¹⁷ See, e.g., Comments of du Treil, Lundin & Rackley, Inc.; Mullaney Engineering, Inc.; Association of Federal Communications Consulting Engineers ("AFCCE"); Greg Best Consulting; and Byron W. St. Clair. In fact, a majority of the engineering firms, as well as the Footnote continued on the next page

support, including from engineers who serve, and are interested in protecting, the full power community as well as the Class A/LPTV community, CBA finds it vexing that MSTV-NAB proposes even more stringent requirements than those in the existing rules that would require not only a blanket LPTV/Class A transmitter site restriction but also pre-operational notification that would put LPTV stations (not to mention primary service Class A stations) on a level below their current secondary status. There is no credible objection to the Commission's proposed interference and protection requirements.¹⁸ The safeguards in place are sufficient to control interference to and from digital operations.

Settlements

14. Settlement agreements to resolve mutual exclusivity must be entertained. To ensure efficiency and to avoid undue delay initiating digital Class A/low power service, the Commission must allow a period of time for licensees with mutually exclusive applications to resolve the exclusivity, using the broadest possible array of financial, engineering or other relevant solutions. A combination of rolling application windows, accessibility to out-of-core channels, and acceptability of settlements will ensure the most orderly and efficient transition to digital operations. The NAB's concerns as to the harmful impact that private interference

National Translator Association also support the use of channels in the Lower and Upper 700 MHz Bands for digital operations on a secondary basis, further evidence that the concerns raised by certain wireless companies should not deter the Commission from making those channels available.

¹⁸ CBA does not oppose the use of mandatory offsets, *see* Comments of du Treil Lundin & Rackley, or the use of default or custom vertical plane patterns, *see* Comments of AFCCE, as ways to reflect more accurately low power digital operations in relation to other full power and low power digital stations.

agreements could have on third parties is unfounded. Interference standards are already in place, and any party that does not enter into a settlement agreement is entitled to the full protection of those standards. Someone who is not party to a settlement and gives up no rights as a result of the settlement should not be heard to claim harm; and those who do enter into agreements will have done so voluntarily and presumably will know and be prepared to accept the impact on their stations.

Ancillary Services

15. No commenter has presented any compelling reason why Class A/LPTV stations should not have the same freedom as full power stations to offer ancillary services. The benefits to the public are the same, and revenue benefits accrue to both licensees and the government. Even if at least one free video programming service is required, and even if Class A/LPTV digital stations are subject to the same public interest obligations as analog LPTV stations,¹⁹ there is no reason to impose more restrictive conditions on Class A/LPTV stations, contrary to the suggestion of MSTV-NAB. LPTV and Class A stations, by virtue of their lower power level and frequent location in rural areas, and their lack of cable and satellite carriage rights, have a smaller economic base than full power stations and are in greater need of economic opportunities to

¹⁹ CBA finds it ironic that the NAB feels it is in a position to tell the FCC what to do regarding the public interest obligations of digital LPTV and Class A Stations, when it itself has a history of fighting the FCC on the imposition of public interest obligations on full power digital broadcast stations. *See, e.g.,* Comments of the NAB filed in MM Dckt. No. 99-36, *et al.* LPTV stations have long been one of the leaders in providing “localism” to their respective communities, and no other broadcast except Class A stations is required by law to provide an average of at least three hours of locally produced programming.

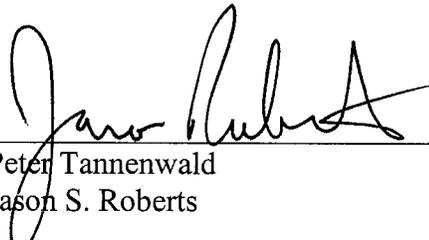
survive. Limiting their ability to experiment within the remaining available spectrum can only hinder the timely introduction of innovative new services.²⁰

Conclusion

16. The Class A/LPTV industry looks forward to the challenges associated with the transition for Class A/LPTV and TV Translator stations to digital broadcasting. As shown by the number of comments filed in this proceeding, the Commission has done a thorough and fair job in crafting proposals that will help to ensure that the Class A/LPTV industry is able to establish a foothold in the digital marketplace. The speculative comments provided by MSTV-NAB and certain of the providers proposing to offer new services in the Upper and Lower 700 MHz Band must be disregarded, as they are not based on legitimate needs and could have a devastating impact on the ability of LPTV and Class A stations to enter the digital era successfully.

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²⁰ CBA disagrees with the position taken by Zenith Electronics Corporation in its Reply Comments that all LPTV/Class A digital operations must comply with the 8-VSB standard. While uniformity certainly may encourage receiver deployment for full power digital television operations, allowing secondary stations to have the flexibility of trying different technical standards will help spur innovation and help the Commission determine if any technical improvements may be made that could in the end benefit the public interest.