

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Amendment of Parts 73 and 74 of the )  
Commission’s Rules to Establish Rules for Digital ) MB Docket No. 03-185  
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 COX BROADCASTING, INC. AND  
THE LIBERTY CORPORATION**

Cox Broadcasting, Inc. (“Cox”) and The Liberty Corporation (“Liberty”) (collectively, the “Joint Commenters”) hereby reply to certain comments submitted in response to the Commission’s *Notice of Proposed Rule Making* in the above captioned-proceeding.<sup>1</sup> In its initial comments, the Joint Commenters expressed support for allowing low power television stations and television translator stations (collectively, “LPTV stations”), and Class A stations to participate in the digital transition by “flash-cutting” on their existing channels. The Joint Commenters emphasized, however, that the Commission should place a higher priority on transitioning full power television stations and specifically urged the Commission to postpone assigning paired channels to LPTV or Class A stations or new channels to non-incumbent stations until complicated repack issues for full power television stations are more fully resolved.

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<sup>1</sup> Amendment of Parts 73 and 74 of the 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, MB Docket No. 03-185, *Notice of Proposed Rule Making*, FCC 03-198 (rel. Aug. 29, 2003) (“*Notice*”). According to publication in the *Federal Register*, reply comments were due on December 26, 2003. *See* 68 Fed. Reg. 55566 (Sept. 26, 2003). These reply comments are timely filed because the due date was extended to December 29, 2003. *See Public Notice*, “FCC Closes on December 26, 2003,” (rel. Dec. 17, 2003).

Likewise, the Joint Commenters recommended that the Commission place a higher priority on establishing distributed transmission networks for full power stations, which would create spectrum opportunities for LPTV stations.

In these reply comments, the Joint Commenters re-emphasize the importance of prioritizing repack issues and question certain comments that effectively propose expanding the scope of this proceeding to create new rights for LPTV and Class A stations.

**I. THE FCC MUST POSTPONE AUTHORIZING PAIRED DIGITAL LPTV OR CLASS A CHANNELS.**

The National Translator Association (“NTA”) and the Community Broadcasters Association (“CBA”) in their comments support the use of paired digital channels for existing analog LPTV and Class A stations.<sup>2</sup> The Joint Commenters do not oppose this proposal but are extremely concerned about the timing of its implementation. Authorizing additional spectrum for digital LPTV and Class A stations during the repack process would hopelessly complicate an already complicated repack task.<sup>3</sup>

Moreover, not only would postponing paired digital operation result in substantial benefits to viewers of full power television stations, such benefits -- contrary to the assertions of some commenters -- would come at little cost. Although CBA, for example, claims that paired channel operation is “vital” to LPTV and Class A stations and that it would be “suicidal” to flash-cut and “cut off” a portion of their existing audiences,<sup>4</sup> LPTV and Class A stations can continue to reach viewers with single-channel operation until dual-channel operation is allowed – and long after. Presently, and over the next several years, even the small percentage of viewers

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<sup>2</sup> NTA Comments at 23-26; CBA Comments at 3.

<sup>3</sup> See Joint Commenters Comments at 2-5.

<sup>4</sup> CBA Comments at 3.

that rely on digital receivers often will have the ability to receive analog signals as well. These persons thus can continue viewing programming from stations that have yet to flash-cut. In addition, the Commission's digital tuner requirements will ensure that those purchasing new receivers can continue viewing programming from all stations both before and after they have flash-cut.<sup>5</sup> Accordingly, single-channel operation will leave fewer viewers behind than some would have the Commission believe.<sup>6</sup> Furthermore, flash-cutting would be less burdensome than constructing and operating a second, temporary facility and thus would be consistent with CBA's own articulated goal of imposing as few economic burdens as possible on LPTV and Class A stations.<sup>7</sup> As such, postponing paired operation until repack plans are more settled would have little impact on LPTV and Class A stations while hugely benefiting the preservation of relied-upon, full power broadcast service.

## **II. THE COMMISSION SHOULD NOT EXPAND THIS DIGITAL TELEVISION PROCEEDING TO CREATE NEW RIGHTS FOR LPTV AND CLASS A STATIONS.**

The *Notice* states that the Commission's goals in this proceeding are to establish a framework for transitioning LPTV and Class A stations to digital with minimal disruption to

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<sup>5</sup> In *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, the Commission required consumer electronics manufacturers to install digital tuners in all new television sets. The five-year phase in period will begin on July 1, 2004, at which time all televisions 36 inches or larger sold in the U.S. will be required to have DTV tuners. By July 1, 2007, all sets, as well as any new display devices, with screens 13 inches or larger will be required to include DTV tuners. See *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Second Report and Order and Second Memorandum Opinion and Order*, 17 FCC Rcd 15978 (2002).

<sup>6</sup> Of course, with the digital tuner requirements, single-channel LPTV and Class A stations can avoid losing practically any of their audience by continuing analog operations and postponing flash-cutting until a time of their choosing.

<sup>7</sup> See CBA Comments at 2.

existing services.<sup>8</sup> A number of commenters, however, wish to expand this proceeding to incorporate certain issues that have little to do with transitioning low power television stations to digital and much to do with changing the nature of the service. CBA, for example, while initially contending in its comments that conversion to digital is vital to low power television stations,<sup>9</sup> nonetheless proceeds to argue contrarily that LPTV stations still need incentives to convert.<sup>10</sup> Foremost among these proposed “incentives” is that low power stations which transition to digital should be accorded primary status.<sup>11</sup> The Commission, of course, already has stated that it would not consider such matters in this proceeding.<sup>12</sup> If the Commission wishes to transform a secondary service to a primary one, it obviously should be done within a proceeding dedicated to such a task.

Similarly, CBA wishes to transform a secondary service which cannot cause interference to one that can. CBA offers that interference standards for digital LPTV and Class A stations should not be “any more of an obstacle than is necessary”<sup>13</sup> and recommends the adoption of a 2% *de minimis* DTV standard – the same as used for full power DTV stations.<sup>14</sup> Such a proposal, however, is entirely at odds with the Commission’s interference rule for analog LPTV stations. LPTV stations must not cause any interference to the viewers of full power television

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<sup>8</sup> Notice, ¶ 2.

<sup>9</sup> CBA Comments at 3.

<sup>10</sup> See CBA Comments at 7-8.

<sup>11</sup> See CBA Comments at 7-8.

<sup>12</sup> Notice, ¶ 37 n. 80 (“In this proceeding we are not addressing the interference protection priorities, rights, and responsibilities of stations in the LPTV service, which are well established. . . . Provisions regarding the secondary regulatory status of stations in the LPTV service are not at issue in this proceeding.”).

<sup>13</sup> CBA Comments at 3.

<sup>14</sup> CBA Comments at 4 n. 8.

and DTV stations,<sup>15</sup> and the amount of caused interference tolerated simply is a function of mathematical rounding.<sup>16</sup> Furthermore, the Commission already has rejected a similar request that Class A stations be permitted to cause interference to more than 0.5% of the population served by a DTV station.<sup>17</sup> Most importantly, however, the Commission must not adopt such an increase in acceptable interference because the basis for the *de minimis* DTV standard – namely allowing for meaningful service replication in critical portions of service areas<sup>18</sup> – is wholly inapplicable to secondary LPTV and Class A stations who have no equivalent concern for their relatively small service areas.

CBA suggests that Class A and LPTV service should transform in other ways as well. For example, CBA would have stations experiment with different customized or specialized service options.<sup>19</sup> The Joint Commenters believe, however, that the Commission simply should adopt its own proposal regarding ancillary and supplemental services. That is, upon meeting the minimum video service requirement, digital LPTV stations should be permitted to offer all of the same ancillary and supplemental services allowed for DTV and digital Class A television broadcasters.<sup>20</sup> CBA also proposes to ease the DTV power limits already in place for low power

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<sup>15</sup> 47 C.F.R. § 74.703.

<sup>16</sup> See Establishment of a Class A Television Service, *Report and Order*, 15 FCC Rcd 6355, ¶ 74 (2000).

<sup>17</sup> Establishment of a Class A Television Service, *Report and Order*, 15 FCC Rcd 6355, ¶ 79 (2000). The Commission reasoned that full-service analog television stations are limited to that amount and the Community Broadcasters Protection Act of 1999 does not require higher status for Class A stations. *Id.*

<sup>18</sup> See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, ¶¶ 79-81 (1998).

<sup>19</sup> CBA Comments at 17.

<sup>20</sup> *Notice*, ¶ 24.

stations.<sup>21</sup> In addition, CBA proposes that digital LPTV and Class A stations be permitted to use transmission standards other than 8-VSB, reasoning that such stations could operate as an “excellent laboratory environment.”<sup>22</sup> Allowing customized service offerings, easing the DTV power limits, or permitting different transmission systems on a general basis has little to do with transitioning to digital, but transforming a service. Such proposals have a significant associated risk of causing impermissible interference to full power stations, and, in any event, stations always can obtain experimental authority on a case-by-case basis.<sup>23</sup>

Finally, CBA believes the FCC should enhance the bargaining position of low power television stations seeking cable or satellite carriage.<sup>24</sup> The Joint Commenters cannot ascertain with certainty what is meant by this request, but the Commission should not expand this proceeding to consider vague proposals for transforming low power service. The Commission instead should focus on its goal of transitioning LPTV stations – especially those in rural areas – with minimal disruption to existing services.

### **III. THE COMMISSION CORRECTLY HAS INTERPRETED ITS DIRECTIVE THAT IT MUST ACCEPT BUT NOT GRANT APPLICATIONS FOR PRIMARY STATUS TO PAIRED DIGITAL CLASS A STATIONS.**

CBA believes that the Commission must instantly preserve the primary status of Class A stations on their second digital channels to fulfill the congressional intent expressed in the Community Broadcasters Protection Act of 1999 (“CBPA”).<sup>25</sup> Although the CBPA requires the Commission to accept digital applications from Class A stations, that statute leaves discretion to

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<sup>21</sup> CBA Comments at 15-16.

<sup>22</sup> CBA Comments at 16.

<sup>23</sup> *See* 47 C.F.R. § 73.1510 (experimental authorizations). Section 74.780 of the Commission’s Rules indicates that Section 73.1510 applies to LPTV stations.

<sup>24</sup> CBA Comments at 18-19.

<sup>25</sup> CBA Comments at 6-7.

the Commission as when to process or grant them. Contrary to CBA's assertion that the CBPA mandates awarding a second DTV channel to Class A stations, the statute simply requires that the Commission "shall accept a license application for such services" that meet certain interference protection requirements.<sup>26</sup> As the Commission has previously stated, "[n]othing in the statute requires that [the Commission] assign a second DTV channel to Class A stations."<sup>27</sup>

At this time the Commission must exercise restraint with respect to issuing additional DTV licenses to preserve spectrum to accommodate needs associated with the transition of full-power television stations to digital.<sup>28</sup> As the Commission is aware, the current limited spectrum availability for new digital stations present great challenges in certain areas of the country.<sup>29</sup> Authorizing new primary digital channels to low power television applicants during repack only would worsen current conditions. It would be impossible for the Commission to preserve relied-upon full power television service if the agency were to create hundreds of new primary channels for low power applicants during repack. Now is not the time for the Commission to risk creating extensive service losses by authorizing such primary digital facilities.

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<sup>26</sup> 47 U.S.C. § 336(f)(4).

<sup>27</sup> Establishment of Class A Television Service, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 8244, ¶ 83 (2001).

<sup>28</sup> See Establishment of Class A Television Service, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 8244, ¶ 84 (2001).

<sup>29</sup> See Notice, ¶ 2.

## CONCLUSION

For these reasons, the Joint Commenters urge the Commission not to assign spectrum for paired digital LPTV or Class A operation or for new non-incumbent operation until repack issues are more fully resolved and to adopt rules in accordance with these reply comments.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Cynthia Forrester, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC do hereby certify that on this 29th day of December, 2003, the foregoing "REPLY COMMENTS OF COX BROADCASTING, INC. AND THE LIBERTY CORPORATION" was served via first class United States mail to the following:

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