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December 10, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**RE: Comments on the Sixth Further Notice of Proposed Rulemaking; MM Docket No. 87-268**

Dear Mr. Caton:

Transmitted herewith on behalf of Acadiana Cable Advertising, Inc., is an original and four (4) copies of its comments on the Sixth Further Notice of Proposed Rulemaking in the above-referenced Docket.

Should any questions arise in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,

Howard J. Barr

Enclosure

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Federal Communications Commission
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Before the
Federal Communications Commission
Washington, D.C. 20554

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| Advanced Television Systems | ) | |
| and Their Impact Upon the | ) | MM Docket No. 87-268 |
| Existing Television Broadcast | ) | |
| Service | ) | |

TO: The Commission

**COMMENTS OF ACADIANA CABLE ADVERTISING, INC. ON THE SIXTH FURTHER NOTICE OF PROPOSED RULEMAKING**

These comments on the Commission's Sixth Further Notice of Proposed Rule Making (FCC 96-207, released August 14, 1996) ("Sixth FNPRM" or "Notice"), are submitted on behalf of Acadiana Cable Advertising, Inc. ("Acadiana"). Acadiana is the licensee of low power television station KDCG-LP, Channel 22, licensed to Opelousas, Louisiana.

## Introduction

In the Sixth FNPRM, the Commission commenced the final step in the implementation of the next era of broadcast television: digital television (DTV). The Notice proposed policies for developing the initial allotments for DTV, procedures for assigning DTV frequencies, and plans for spectrum recovery. See Notice, at para. 1. Unfortunately, this proposed final step may prove to be a misstep towards fulfilling the objective of promoting the public interest. By shrinking the available spectrum at the same time that demands on the spectrum are exploding,

the Commission is effectively legislating low power television ("LPTV") and TV translators out of existence. Diversity of programming will suffer as a result of the elimination of LPTV and TV translators. Moreover, the Commission's action will have the negative consequence of reinforcing a trend away from local programming.

The disastrous consequences to Acadiana's channel 22 LPTV station, as a result of the Commission's misstep, are particularly poignant. The Commission proposes to allot DTV channel 22 to Channel 10 in Lafayette, Louisiana. Once implemented, KDCG-LP will likely be unceremoniously removed from the air. As a consequence, diversity of programming in Opelousas will be severely impaired.

The Commission should avert the potential disaster to KDCG-LP and other LPTV and TV translators by deferring reclamation of unused spectrum until the completion of the conversion to DTV. In addition, the computer program for generating allotments should be modified to include LPTV and translator channel assignments. Finally, LPTV and translator broadcasters should be given the latitude to determine when to make the transition from NTSC to DTV on their assigned channels.

## The Importance of LPTV and Translators

The LPTV and translator services were established by the Commission to supplement coverage offered by full service NTSC stations. These services are described as "secondary" services, but they are in no sense secondary with respect to the services they furnish. LPTV and translators are a primary vehicle by which true community based broadcast service is made available to special markets. LPTV and

translator broadcasters exemplify the best of the American pioneer and entrepreneurial spirit. Without LPTV, many communities would be devoid of local content over the television airwaves. Translators bring television broadcasts to communities that might otherwise be silent.

The smallness of LPTV and translator broadcasters is both their strength and weakness. On the one hand, the lack of bureaucratic impediments allows the small broadcaster to exercise increased creativity, with the flexibility to address the needs of its communities of license. On the other hand, however, the small broadcaster can be shouldered aside in favor of grand schemes of spectrum reclamation.

The elimination of LPTV and translator broadcasters will tend to further homogenize a medium that is already under severe pressure toward centralization. One of the fastest growing segments of the television industry is Digital Satellite Television ("DST"). Although DST may increase the volume of available programming, it offers no local content. To compete effectively with DST, cable systems will be driven to offer similar mass programming—again, at the expense of local programming content. During the transition period from NTSC to DTV, even full service television stations are likely to focus less on local content as they struggle with the complexities and expenses of keeping two stations on the air. In the face of these pressures away from local content, the public interest is best served by encouraging LPTV and translator broadcasters, rather than by fostering their extermination.

Each a corollary injury to the viewing public, which will be deprived of local content. For many rural and ethnic communities, the only source of local content is an LPTV station. Each LPTV or translator sacrificed on the altar of premature spectrum recovery is another community deprived of responsive local programming.

The Commission should also consider the harm to the public interest that will arise through the debilitation of the LPTV and TV translator industry as a result of the Commission's proposal to shrink the TV spectrum prematurely. These services offer a vehicle for new entrants to the television market, thereby insuring the continued vitality of the medium. LPTV is the only avenue by which new voices with modest financial resources may reach the public through free television.

The public interest is best served by bringing the greatest number of television stations to the most communities. Unfortunately, the Commission's plan for spectrum recovery eviscerates this objective. Under the proposals set forth in the Notice, the number of full service stations will double, but content over full service stations will remain unchanged. Even worse, with spectrum contraction, there will be a drastic loss of service. Aggregate content over the television airwaves will shrink, as local content furnished by LPTV and translators is unnecessarily swept aside.

The Notice pays lip service to the benefits that LPTV and translators provide to the public:

> LPTV stations have increased the diversity of television programming and station ownership, and serve many rural and urban ethnic communities. TV translators are used to provide TV service to communities located in areas of mountainous terrain and to provide

"fill-in" service to shadowed areas within a full service stations service area.

Notice, at para. 67. This praise rings hollow, however, when considered in tandem with the Commission's proposed action to shrink the spectrum, thereby driving LPTV and TV translators off the dial.

## Unsatisfactory Remedies

At least as far back as 1992, in the Second Further Notice of Proposed Rule Making, 7 FCC Rcd. 5376, 5384 (1992) the Commission determined that "there is insufficient spectrum available in the broadcast TV bands to factor in low power displacement considerations in making DTV assignments". Rather than devoting the required resources to preserving the valuable services provided by LPTV and TV translators, the Commission—through its proposed spectrum recovery proposals—is drastically contracting the available spectrum.

The Commission's proposal for ameliorating the dire situation facing LPTV and translator broadcasters is unsatisfactory. The Commission proposes to continue to permit displaced low power stations to apply for a suitable replacement channels in the same area without being subject to competing applications. Notice, at para. 67. As the least affluent members of the television broadcast community, LPTV and translator broadcasters are the most poorly equipped to undertake the engineering requirements to search for unoccupied space in a shrinking spectrum. As the Commission observed "LPTV and TV translator stations are carefully engineered to avoid causing interference to full service TV operations". Notice, at para. 66. The expenses already incurred to develop this careful engineering will be forfeited in the

name of premature spectrum recovery. Moreover, many of these small broadcasters would not be able to bear the expense of switching to a new frequency. In addition to the burden of renewed engineering expenses, they will suffer losses through service interruptions and the concomitant losses incurred as a result of lost employees, and loan and lease defaults.

The Notice takes the optimistic view that "with more intensive utilization of the remaining channels, it should be possible to accommodate many LPTV and TV translator operations that are displaced." Notice, at para. 66 (emphasis added). This is nupport this view. The Commission has deliberately avoided undertaking the one study that might have illuminated the hazards facing LPTV and TV translator operators. The computer software developed to facilitate the task of assigning new DTV channels fails to take LPTV and TV translator stations into account.

The Commission's cavalier approach to the continued viability of LPTV and translators is unconscionable. When stripped of the sympathetic facade, the proposals set forth in the Notice are nothing more than inchoate good wishes. Even though the loss of LPTV and translator stations will severely reduce the number of independent channels in many markets, the Commission has done nothing more than speculate about the extent or ramifications of the loss. Rather than developing studies to determine the best methods for preserving diversity in the television spectrum, the Commission is working entirely in the dark.

The Commission should insure that, where feasible, each LPTV and translator station currently on the air is assigned a channel on the DTV table of

allotments. Mirroring the flexibility enjoyed by LPTV and translator stations to respond to local needs for program content, LPTV and translator stations should be allowed to determine when to make the transition form NTSC to DTV broadcasts.

At a minimum, the Commission should modify its software to add LPTV and TV translator stations. The table of allotments could still give precedence to full service stations and to the assignment of DTV channels. But the inclusion of LPTV and TV translator stations in the determination process will help to preserve an important community service where possible. It would also have the salutary effect of furnishing a reasonable estimate of the scope of damage faced by the LPTV and translator industries.

## Conclusion

The Commission has embarked on a challenging course to evolve broadcast television. Let this decision not also be remembered as the death knell for the last reservoir of community based programming over free television. The Commission must take affirmative action to preserve LPTV and translator stations. Plans for recapturing television spectrum should be deferred until after the transition to DTV is complete. In implementing the transition to DTV, the software used to generate the table of allotments should be modified. Wherever feasible LPTV and translator stations should remain at current channel assignments. If a channel currently occupied by an LPTV or translator station is required for the DTV transition, an alternative channel should be assigned to the displaced station. Since they will have

only one channel to work with, LPTV and translator broadcasters should be given the latitude to determine when to make the transition from NTSC to DTV.

Acadiana Cable Advertising, Inc. recognizes complexity of the task faced by the Commission. The benefits to the public interest to be reaped by the preservation of LPTV and translator stations, justify the effort.

Respectfully submitted,

**ACADIANA CABLE ADVERTISING, INC.**

By: _____
Howard J. Barr, Esq.
Its Attorney

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