DOCKET FILE COPY ORIGINAL

ORIGINAL

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

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service	)	
Petition for Rule Making	)	RM No. 9260
	)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

I. INTRODUCTION

The National Association of Broadcasters ("NAB")[1] submits the following Comments in response to the above-captioned *Petition for Rule Making* ("petition").[2] NAB believes the petition should be denied because, as the Commission has reasonably maintained throughout the digital television proceeding, LPTV is a secondary service which must not be allowed to confound the FCC's plan to transition all existing full-power stations to DTV. The transition to DTV by full-power television stations must be allowed to proceed without added concerns or questions about a new class of television stations. The DTV transition already faces a complicated and difficult road. LPTV should not be allowed to add further complications just as the DTV transition for existing full-power television stations is beginning and before the new DTV stations have had a chance to perfect their coverage areas. NAB opposes opening a rulemaking to establish a new class of television stations, as the instant petition requests.

---

[1] NAB is a non-profit, incorporated association of radio and television stations and broadcast networks which serves and represents the American broadcasting industry.

[2] *In the Matter of Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service*, RM-9260, filed on September 30, 1997, amended March 18, 1998, placed on Public Notice on April 21, 1998.

No. of Copies rec'd 0+11
List A B C D E MMB

II. BACKGROUND

The Community Broadcasters Association ("CBA") originally filed the above captioned petition with the Commission on September 30, 1997. It amended the petition on March 18, 1998. The petition requests the adoption of rules to create a new "Class A" television station class. The new class of TV stations would provide primary spectrum user status to qualified LPTV stations and, according to petitioners, avoid "the unnecessary displacement of such stations"[3] due to the DTV transition. The petition would grant interference protection to new Class A stations within their principal city grade contours from stations that are "authorized" after the date of filing of the Class A application.[4] The petition also outlines proposed rule changes that would allow facilities modifications for Class A stations as long as they would not cause interference within the Grade B contour of any television station that is operating as of the date of filing of the Class A application.[5]

II. THE COMMISSION SHOULD MAINTAIN THE STATUS QUO IN ORDER TO ENSURE A SMOOTH DTV TRANSITION.

1. LPTV Is A Secondary Service And Should Remain Secondary.

Throughout the DTV proceeding the Commission has maintained – and stressed – that LPTV stations and translators are secondary users of the television spectrum.[6] As a secondary service, LPTV station licensees have always been on notice that full-power television service

---

[3] *Petition* at 1.

[4] *Petition Appendix A* at 2-3.

[5] *Petition Appendix A* at 2.

[6] *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, ___ FCC Rcd ___, at para. 106 (1998); *Sixth Report and Order*, 12 FCC Rcd 14588, 14652 (1997); *Sixth Further Notice of Proposed Rule Making*, ___ FCC Rcd ___, at para. 64 & 67 (1997). *See also An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System* (Low Power Service Order), 51 RR 2d 476, 488 (1982).

may displace their stations at any time.[7] The FCC has noted in the on-going DTV proceeding that "the low power television service was established for the specific purpose of supplementing conventional broadcast station coverage."[8] Based on the secondary status of LPTV stations and TV translators and the lack of sufficient available spectrum, the FCC refused to include LPTVs and translators in the initial class of eligible DTV broadcasters.[9]

Ultimately, this petition is an attempt to give the benefit of full-power status to a selected few from a secondary service – and without the burdens of all the regulations of full-power stations. This is simply not warranted. The concepts outlined in the petition originally were presented at a time when the FCC was still determining how DTV channels could be allocated to all full-power stations. At that time, CBA was attempting to avoid displacement of LPTVs and TV translators before any allocation table was finalized. In its petition, CBA still says that this new licensing scheme will avoid displacement of LPTVs due to the DTV transition. One, such displacement cannot be avoided. There simply is not enough spectrum to provide for a smooth DTV transition for full-power stations and not displace some LPTV stations during that process.[10] And, two, to the extent some LPTV displacement would be avoided, it would happen to the potential detriment of full-power DTV service. This cannot be allowed. It is long settled that full-power DTV channel assignments come first.[11] The Commission noted this sentiment

---

[7] *Second Report and Order*, 7 FCC Rcd 3340, 3351 (1992).

[8] *Id.* (citing *Low Power Service Order*, 51 RR 2d 476, 488 (1982)).

[9] *Id.*

[10] Existing TV translators face a similar fate of potential displacement; however, the DTV transition is important enough to require the licensees to move or wait for replacement channels after the transition is over.

[11] 7 FCC Rcd at 3351. ("We are thus compelled to agree with those who believe that ATV implementation will require that LPTVs and translators, as secondary services, yield to new full-power ATV stations"). *See also Polar Broadcasting, et al. v. FCC*, 22 F.3d 1184 (1994).

when it stated: "We must ensure that our goals for the implementation of DTV are achieved before taking any additional steps to minimize the impact on these secondary operations."[12]

The Commission has attempted to mitigate the impact of the DTV transition on LPTV stations in other less disruptive ways. It has permitted displaced LPTV stations to apply for replacement channels in the same areas without being subject to competing applications.[13] These applications are considered on a first-come, first served basis without the issuance of a low power application window.[14] And the FCC has lessened the interference rules for low power stations in order to provide more flexibility for those stations.[15] The Commission should not impede the DTV transition in its infancy by giving primary status now to a secondary low power service that has long been on notice as to possible displacement.[16]

2. The Petition Obscures the Impact of Its Proposal on the Transition to DTV by Full-Power Stations.

The petition is less than clear as to how DTV stations will be affected by its proposed changes. It proposes Class A protection against all new TV stations except those stations that are "authorized" as of the filing date of the Class A application.[17] Additionally, a LPTV station would only have to show that the new Class A station would not cause interference to any TV station that is operating as of the date of filing of the Class A application.

---

[12] *Memorandum Opinion and Order on Reconsideration of Sixth Report and Order*, ___ FCC Rcd ____, para. 106 (1998).

[13] *Sixth Report and Order*, 12 FCC Rcd at 14653.

[14] *Id.*

[15] *Id.* at 14654.

[16] At the point when it is appropriate to begin adding new DTV facilities, the Commission must carefully consider whether special consideration should be given to TV translators or LPTVs.

[17] *Petition Appendix A* at 2.

Under such a proposal, a LPTV station would have primary status and protection against a full-power DTV station that is "authorized" after the date of the filing of a Class A application. Thus, if "authorization" equates to issuance of a DTV construction permit or license from the Commission, it is possible that, if the petition was granted, a new Class A TV station could have interference protection against a full-power DTV station that is to construct at the end of the DTV transition schedule. Likewise, if a full-power DTV station is not operating at the time of the filing of the Class A application, a LPTV station does not have to provide any information regarding possible interference to the full-power DTV station – a clearly unacceptable outcome.[18]

The Commission simply should not entertain any proposals that could have an adverse impact on the implementation of DTV. DTV channel changes and other adjustments to DTV service should not potentially be constrained by a rush of LPTV stations seeking new primary status. So too should the perfecting of DTV service to the public through DTV translators not be jeopardized by such a proposal. As pointed out in previously filed comments, NAB supports the Commission's determination that the public is best served by maintaining the priority of full-service stations throughout the DTV transition.[19] The planning factors for DTV are aggressive, have not been fully proven and should be verified before introducing another class of television station into the mix. The transition to DTV is best served by maintaining the current rules without now establishing a new class of television stations.

---

[18] *Id.* at 1.

[19] *See Comment On and Opposition to Petitions for Reconsideration of the Fifth and Sixth Reports and Orders Submitted by the Association for Maximum Service Television, Inc. and the Broadcasters Caucus*, filed on July 18, 1997, at 23.

IV. CONCLUSION

The Commission has considered the impact of the DTV transition on LPTV stations and has concluded that displacement of some LPTVs cannot be avoided without hampering the DTV plan. LPTV licensees have always operated with knowledge that they could be displaced – that is the nature of a secondary service. The Commission should not now consider establishing a new class of television stations to accommodate those stations that may be displaced. In order for the public to receive the benefit of DTV, the Commission should allow the DTV transition to proceed without initiating a proceeding that may adversely impact or complicate the implementation of DTV. Thus, the petition filed by CBA should be dismissed.

Respectfully Submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036
(202) 429-5430

Henry L. Baumann/LSH
Henry L. Baumann

Valerie Schulte/LSH
Valerie Schulte

Lori J. Holy
Lori J. Holy

May 22, 1998

CERTIFICATE OF SERVICE

I, Angela Barber, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Comments of the National Association of Broadcasters was sent this 22nd day of May, 1998, by first-class mail, postage prepaid, to the following:

Sherwin Grossman, President
Michael Sullivan, Executive Director
Community Broadcasters Assn.
1600 Aspen Lane
St. Cloud, MN 56303

Peter Tannenwald
Elizabeth A. Sims
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, D.C. 20036-3101
*Counsel for the Community Broadcasters Association

Angela Barber