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

In the Matter of	)	
	)	
Petition for Rulemaking By	)	RM-9260
Community Broadcasters Association	)	
To Create a "Class A" TV Service	)	

To: The Commission

COMMENTS OF THE TRINITY BROADCASTING NETWORK IN GENERAL SUPPORT

Pursuant to the Commission's April 21, 1998 *Public Notice*, Mimeo No. 82996, and Rule 1.405, 47 CFR §1.405, Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity") files these comments in support of the Community Broadcasters Association's ("CBA") captioned rulemaking Petition.[1]

As a general matter Trinity supports the proposals contained in CBA's Petition, with one important exception. For the sake of brevity, Trinity will not reiterate all portions of the majority of the Petition with which it agrees, but will simply focus on the single issue with which it disagrees -- the requirement that Class A applicants can only qualify if they have already broadcast, for the previous 90-days, three hours of local programming. Trinity also offers two needed technical clarifications regarding the principal city coverage contour requirement and predicted interference protection.

[1] A listing of Trinity's television translator and LPTV facilities is appended as Attachment 1.

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I. Class A Status Can Not Properly Be Based on Previously Meeting the Three Hours of Local Programming Requirement

CBA's Petition proposes that "an applicant would qualify [for Class A status] by demonstrating that continuously during the preceding three months its station . . . for each calendar week, aired at least three hours of programming produced in the protected service area of the station . . . [and] not otherwise available to [the] communit[y]." This is not presently a requirement of LPTV broadcasters,[2] and obviously was included by CBA to give just a limited number of operators an added promotion in the hierarchy of LPTV applicants for Class A status.[3] Stated simply, those that meet this requirement would gain at least a 90 day advantage in the application submission process, while all other applicants would be forced to wait at least 90 days to come into compliance with the new requirement. There are three specific insurmountable problems with this proposal, however.

First, retroactive application of a 90 day local programming rule would trench upon the prohibition against the FCC making content-based analysis in programming. The proposed 90 day requirement would create a schism in the class based upon the content of the programming. In Turner Broadcasting System v. FCC, 129 L.Ed.2d 497 (1994), the Supreme Court expressed discomfort with the notion that virtually identical content-based regulations against LPTV broadcasters would withstand constitutional scrutiny:

> The must-carry rules also require carriage, under certain limited

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[2] Rule 74.701(f) defines an LPTV station as "[a] station ... that may retransmit the programs and signal of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour."

[3] CBA thus wishes to create a subclass of applicants which would essentially be granted preferential "A+" status.

> circumstances, of low power broadcast stations. Under the Act, a low power station may become eligible for carriage only if, among other things, the FCC determines that the station's programming 'would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distances of such full power stations from the low power station's community of license.' *We recognize that this aspect of § 4 appears to single out certain low-power broadcasters for special benefits on the basis of content. Because the District Court did not address whether these particular provisions are content-based, and because the parties make only the most glancing reference to the operation of, and justifications for, the low-power broadcast provisions, we think it prudent to allow the District Court to consider the content-neutral or content-based character of this provision in the first instance on remand.*

129 L.Ed.2d at 518 n.6 (emphasis added). A fundamentally equivalent provision here as a prerequisite for qualification for Class A status also unduly "single[s] out certain low-power broadcasters for special benefits on the basis of content."[4]

"Content-based regulations are presumptively invalid." R.A.V. v. St. Paul, 505 U.S. 377, 382 (1992) (citations omitted). Thus, as a general matter, the government cannot

> legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Reed v. Reed, 404 U.S. 71, 75-76 (1971) (citations omitted); Eisenstadt v. Baird, 405 U.S. 438, 446-47 (1972).

Rather than adopting a rule which treats similarly situated LPTV broadcasters in a

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[4] Because Class A stations would be Part 73 facilities, the definition of a "local commercial television station" in Rule 76.55(c) should also be clarified to include Class A stations.

disparate manner, and which uses a presumptively invalid content-based criteria, it would best serve the interests of both the Commission and potential Class A applicants not to place such an additional requirement into the new rule.

Second, because there is no articulated reason for such differential treatment of similarly situated LPTV broadcasters based upon (at the very least) a rational factual basis, it is likely that such a requirement would be struck down as "arbitrary and capricious." Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993); Lutheran Church Missouri-Synod v. FCC, 1998 WL 168712 (D.C. Cir. 1998).

Third, the "90 days prior" proposal runs afoul of the Administrative Procedures Act, 5 U.S.C. § 553 *et seq.* ("APA"). The APA's notice and comment procedure assures that the public and persons being regulated are given an opportunity to participate, provide information and suggest alternatives, so that the agency is educated about the impact of its proposed rule and can make a fair and mature decision. NLRB v. Wyman-Gordon Co., 394 U.S. 759 (19 69); Lewis - Mota v. Sec of Labor, 469 F.2d 478 (2d Cir. 1972); Texaco, Inc. v. Federal Power Comm'n, 412 F.2d 740 (3d Cir. 1969). The APA's notice and the opportunity to be heard are essential components of fairness to affected parties. Small Refiner Lead Phase-Down Task Force v. U.S. Environ. Protection Agency, 705 F.2d 506, 547 (D.C. Cir. 1983) (citations omitted). Thus, by giving affected parties an opportunity to develop evidence in the record to support their objections to the rule, notice enhances the quality of judicial review. *Id.*

The idea of the APA is that parties affected by proposed regulations will be able to have input into the creation of rules prior to their adoption and implementation. Application of the "90 days prior" rule from the date such a rule becomes effective undercuts the purpose of the

APA, however. The "pre-adoption" requirement of such a standard would require Class A candidates to assume the enactment of the proposed local program standard *prior* to its publication in the Federal Register. In other words, to assure an equal opportunity to gain Class A status from the outset, all applicants would be forced to assume that the rule was in effect prior to its adoption. Such a scenario undercuts the entire notice and comment rationale of the APA. It also means parties which object to such a rule would nonetheless be required to adhere to the proposed rule prior to its adoption. This renders the APA's notice and comment requirements meaningless.

Consequently, rather than assuming there is a rationale for this content-based requirement (heretofore unsubstantiated and unarticulated), Trinity simply suggests that there be no requirement that 90 days prior to filing for Class A status an applicant show it broadcast three hours per week of local programming. The rule should be prospective only, and all LPTV broadcasters wishing to obtain Class A status should be required to only certify that in the future they will comply with the local program standard.

II. Two Technical Clarifications Are Needed

A. No Principal City Contour Requirement Should Apply

The *Notice* states that a Class A applicant will also have to certify compliance "with all requirements applicable to TV broadcast stations, except as limited by the station's power level and the manner in which the channel was assigned to the station under the LPTV rules in Part 74." *Notice* at 2. Part 73 broadcasters are required to provide a principal city coverage contour in accordance with Rule 73.683. The rule specifies the method to calculate city grade coverage and incorporates the requirements of Rule 73.685, which requires that for channels 14-69 the

principal city have a minimum of 80 dbu over the entire community of service. This level is greater than the normal Grade A coverage LPTV stations use.

Because LPTV stations were designed to fit available gaps in coverage between full power stations, a requirement that they meet an 80 dbu signal strength over its community of license in order to receive Class A status would be manifestly unreasonable and is unwarranted. Trinity requests that the Commission clarify that the city grade coverage requirements applicable to Part 73 broadcasters will not apply to Class A LPTV stations.

B. Only Actual Interference Should be Protected

In many instances the Grade B contours of full power TV stations already receive interference from other full power stations. This may be caused by co-channel or other factors. The area interfered with is predictable and the full power station accepts it. The *Notice* provides that an LPTV facility can seek Class A status, and convert to DTV operations "provided the conversion met the interference protection standards applicable to primary stations or would not cause *any* more interference to another station." *Notice* at 2. This will surely result in such a limitation that very few facilities will likely be able to achieve Class A status.

Rather than require a Class A applicant to protect another stations predicted interference, only actual interference should be precluded. This will allow more facilities to become Class A stations. Also, if interference already exists in connection with the operation of another full power station allowing the Class A operator to put more "interference" into the same area should be permitted.

III. Conclusion

Trinity generally supports creation of a Class A status for qualified LPTV stations. However, it would be legally impermissible to establish a "90 days prior" local programming requirement to qualify for Class A status. Such a requirement would trench upon the prohibition against the FCC making content-based analysis in programming, and would be clearly arbitrary. The "90 days prior" standard would also violate the requirements of the APA.

In addition, before any Class A status is created, the Commission should clarify that a Class A station has no principal city coverage contour requirement, and only actual interference need be protected.

It is, therefore, respectfully requested that the Commission develop a Class A station status as specified in the *Notice*, subject to the modifications and clarifications noted above.

Respectfully submitted,

TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.
d/b/a TRINITY BROADCASTING NETWORK

By:_____
Colby M. May
Mark N. Troobnick
Its Attorneys

Law Offices of Colby M. May
1000 Thomas Jefferson Street NW
Suite 609
Washington, DC 20007
(202) 298-6348

May 22, 1998

ATTACHMENT 1

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

COMMUNITY OF LICENSE	STATUS	CALLSIGN
Elmira, NY	(CP)	W59DG
Dickinson, ND	(CP)	K28EP
Austin, TX	(CP)	K26EY
Bismarck, ND	(CP)	K46DY
Idaho Falls, ID	(CP)	K26EW
Minot, ND	(CP)	K31EQ
Jonesboro, AR	(CP)	K54ER
Modesto, CA	(CP)	K49EO
Minneapolis, MN	(CP)	K65DG
Cresaptown, MD	(CP)	W43BP
Altoona, PA	(CP)	W41CF
Erie, PA	(CP)	W48CH
Youngstown, OH	(CP)	W52CX
Chico/Paradise, CA	(CP)	K53FT
The following are licensed stations.		
Dothan, AL		W41BN
Eufaula, AL		W30BD
Opelika, AL		W35BE
Scottsboro, AL		W64BJ
Selma, AL		W52BC
Fayetteville, AR		K42BS
Fort Smith, AR		K27DI
Paragould, AR		K27FC
Hot Springs, AR		K44EV

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

Mountain Home, AR		K43CJ
Bullhead City, AZ		K20CZ
Cottonwood, AZ		K58AV
Flagstaff, AZ		K62BA
Globe, AZ		K63DK
Shonto, AZ		K38CX
Tucson, AZ		K56ED
Tucson, AZ		K57BD
Atwater, CA		K57FD
Bakersfield, CA		K55CN
Chico/Paradise, CA		K67DY
Coalinga, CA		K42DT
Desert Hot Springs, CA		K60BB
Eureka, CA		K47EH
Lancaster/Palmdale, CA		K54DN
Lucerne Valley, CA		K33DK
Mariposa, CA		K28EM
Monteray, CA		K53DT
Palm Springs, CA		K66BM
Porterville/Visalia, CA		K15CO
Redding, CA		K65DJ
Sacramento, CA		K69FB
Santa Barbara, CA		K15DB
TwentyNine Palms, CA		K38EE
Ventura, CA		K45DU

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

Victorville, CA		K33BT
Denver, CO		K57BT
Denver, CO		K33DN
Denver, CO		K66FB
Loveland, CO		K48CG
Dover, DE		W68CQ
Fort Myers, FL		W67BY
Lake City, FL		W23AQ
Naples, FL		W54CC
Panama City, FL		W68CM
Port Charlotte, FL		W52CN
Sebring, FL		W60CD
St Petersburg, FL		W60BK
Tampa, FL		W68CF
Albany, GA		W23AC
Augusta, GA		W65BI
Brunswick, GA		W33AL
Macon, GA		W52CL
Marietta, GA		W55BM
Savanneh, GA		W67BJ
Statesboro, GA		W48BH
Tifton, GA		W20BF
Valdosta, GA		W66BW
Waycross, GA		W46BZ
Cedar Rapids, IA		K61FF

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

Davenport, IA		K58BX
Muscatine, IA		K52FN
Ottumwa, IA		K42AM
Waterloo, IA		K65BY
Boise, ID		K47BE
Couer D'Alene, ID		K53FF
Pocatello, ID		K15DG
Twin Falls, ID		K25EV
Champaign, IL		W34AY
Decatur, IL		W29BG
Elgin, IL		W29BN
Palatine/Chicago, IL		W36AO
Waukegan, IL		W22AJ
Elkhart, IN		W67CY
Evansville, IN		W38BK
Lafayette, IN		W36AR
Terre Haute, IN		W65BK
Junction City, KS		K25DS
Manhattan, KS		K31BW
Salina, KS		K15CN
Topeka, KS		K21AP
Wichita, KS		K59DA
Corbin, KY		W33BK
Hopkinsville, KY		W62BH
Alexandria, LA		K19DM

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

Baton Rouge, LA		K56DR
Mermentau, LA		K45DI
Monroe, LA		K49DE
New Orleans, LA		K59DG
Shreveport, LA		W65CE
Springfield, MA		W67DF
Cresaptown, MD		W16AE
Bangor, ME		W17BF
Danforth, ME		W17BJ
Dover/Foxcroft, ME		W19BL
Farmington, ME		W21BI
Machias, ME		W21BH
Madawaska, ME		W17BN
Medway, ME		W14BO
Presque Isle, ME		W51AG
Detroit, MI		W66BV
Duluth, MN		K58CM
Minneapolis, MN		K58BS
Rochester, MN		K60DS
St. Cloud, MN		K19BG
Columbia, MO		K56AU
Jefferson City, MO		K41OI
Poplar Bluff, MO		K39CP
Springfield, MO		K52DH
Springfield, MO		K49DG

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

St Charles, MO		K34BR
St Louis, MO		K18BT
Biloxi, MS		W29BH
Columbus, MS		W25AD
Greenville, MS		W33BH
Grenada, MS		W25BA
McComb, MS		W36AC
Meridian, MS		W63BK
Natchez, MS		K58BO
Pascagoula, MS		W46AV
Great Falls, MT		K53DW
Helena, MT		K41CX
Kalispell, MT		K26DD
Charlotte, NC		W68BL
Fayetteville, NC		W53BE
Goldsboro, NC		W59BA
Greenville, NC		W54BR
Jacksonville, NC		W21BL
Lumberton, NC		W52BM
Raleigh, NC		W38BB
Rocky Mount, NC		W53BF
Statesville, NC		W66BT
Wilmington, NC		W20AL
Fargo, ND		K56ET
Grand Forks, ND		K22DQ

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

Williston, ND		K40DE
Lincoln, NE		K39AJ
Norfolk, NE		K52ES
Ogallala, NE		K26CV
Atlantic City, NJ		W36BJ
Raton, NM		K18CT
Carson City, NV		K19CU
Las Vegas, NV		K57FA
Reno, NV		K45AV
Albany, NY		W64BH
Binghamton, NY		W26BS
Glens Falls, NY		W14AZ
Jamestown, NY		W10BH
Olean, NY		W22AZ
Utica, NY		W41AE
Chillicothe, OH		W40AE
Dayton, OH		W68BP
Kirtland, OH		W51BI
Lexington, OH		W32AR
Portsmouth, OH		W21AI
Springfield, OH		W47BC
Youngstown, OH		W39AI
Zanesville, OH		W36AY
Ardmore, OK		K44BQ
Lawton, OK		K27AZ

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

Tahlequah, OK		K45ER
Bend, OR		K33AG
Coos Bay, OR		K33AO
Grants Pass, OR		K59DU
Klamath Falls, OR		K58BG
Lakeview, OR		K21BC
Medford, OR		K57ED
Roseburg, OR		K14HA
Erie, PA		W42BX
Meadville, PA		W52BO
Pittsburgh, PA		W65CG
State College, PA		W42BJ
Williamsport, PA		W39BT
Anderson, SC		W18BF
Beaufort, SC		W40AW
Charleston, SC		W44AX
Myrtle Beach, SC		W66BJ
Orangeburg, SC		W52BK
Aberdeen, SD		K20DA
Huron, SD		K38CQ
Madison, SD		K27DB
Rapid City, SD		K33CO
Sioux Falls, SD		K66ET
Yankton, SD		K31DP
Cookeville, TN		W46AJ

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

Jackson, TN		W35AH
Knoxville, TN		W60CF
Morristown, TN		W31AS
Nashville, TN		W36AK
Texarkana, TX		K30EA
Abilene, TX		W51CK
Austin, TX		K63DR
Brownwood, TX		K26AP
College Station, TX		K47ED
Corpus Christi, TX		K57FC
Kingsville, TX		K46DL
Palastine, TX		K17BP
Paris, TX		K42DA
San Antonio, TX		K20BW
San Antonio, TX		K33CK
San Angelo, TX		K19DF
Uvalde, TX		K15BV
Victoria, TX		K43DV
Ogden, UT		K64CJ
Vernal, UT		K39AK
Lynchburg, VA		W32BA
Roanoke, VA		W49AP
Virginia Beach, VA		W24OI
Burlington, VT		W16AL
Aberdeen, WA		K23AS

TRINITY BROADCASTING NETWORK - Low Power TVs
(Construction Permits & Licenses)

Spokane, WA		K55EB
Wenatchee, WA		K34EM
Green Bay, WI		W68BS
Janesville, WI		W19BH
Madison, WI		W33AX
Oshkosh, WI		W34BV
Ripon, WI		W34BF
Sheboygan, WI		W20AG
Waupaca, WI		W55BY
Parkersberg, WV		W39AZ
Green River, WY		K35CN

TOTAL: Construction Permits: 15
Licensed Stations: 220
Total Stations: 235

CERTIFICATE OF SERVICE

I, Glinda M. Corbin, Office Manager in the Law Office of Colby M. May, hereby certify that I have caused to be sent, this 22nd of May 1998, via First Class U.S. Mail, postage prepaid, a true and correct copy of the foregoing **COMMENTS OF THE TRINITY BROADCASTING NETWORK IN GENERAL SUPPORT** to the following:

Keith Larson*/
Assistant Chief for Engineering
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

Peter Tannenwald, Esq.
Irwin Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3101

Community Broadcasters Association
1600 Aspen Lane
St. Cloud, Minnesota 56303

Glinda M. Corbin

Glinda M. Corbin

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*/ Hand Deliver