

Rosenman

DOCKET FILE COPY ORIGINAL

ROSENMAN & COLIN LLP
805 15TH STREET, N.W.
9TH FLOOR
WASHINGTON, D.C. 20005-2202
TELEPHONE: (202) 216-4600
FACSIMILE: (202) 216-4700
WEB SITE: <http://www.rosenman.com>

March 29, 1999

Hand Delivery

Magalie Román Salas, Secretary
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
MAR 29 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS
(202) 216-4644

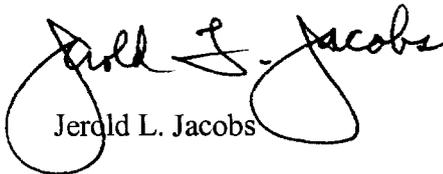
Re: **ET Docket No. 99-34**
Industry Coordination Committee

Dear Ms. Salas:

On behalf of our clients, James J. Chladek, Island Broadcasting Co., Minnesota Valley TV Improvement Corporation, and Sage Broadcasting Corporation, licensees of more than 25 LPTV or TV translator stations in Florida, New York, Minnesota, and Texas, respectively, transmitted herewith for filing are an original and nine (9) copies of their "Comments of Four LPTV Licensees" in response to the Notice of Proposed Rule Making in the above-referenced Docket.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: Mr. Alan Stillwell, Office of Engineering and Technology
(FCC – By Hand – w/enc. and Diskette)
International Transcription Service, Inc. (By Hand – w/enc. and Diskette)

No. of Copies rec'd 019
List A B C D E

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

RECEIVED
MAR 29 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
An Industry Coordination Committee)
System for Broadcast Digital)
Television Service)

ET Docket No. 99-34

TO: The Commission

COMMENTS OF FOUR LPTV LICENSEES

JAMES J. CHLADEK, ISLAND BROADCASTING CO., MINNESOTA VALLEY TV IMPROVEMENT CORPORATION, and SAGE BROADCASTING CORPORATION (together, the "Four LPTV Licensees" or the "Licensees"), licensees of more than 25 low power television ("LPTV") stations or television translator stations in Florida, New York, Minnesota, and Texas, respectively, by their attorneys, pursuant to §1.415 of the Commission's Rules, hereby submit their Comments on the Notice of Proposed Rule Making ("Notice"), FCC 99-8, released February 3, 1999, in the above-captioned matter. In support whereof, the following is shown:

I. Introduction

1. As the DTV rollout progresses, LPTV and TV translator licensees throughout the United States face actual and impending displacement of their frequencies by new DTV stations and by the Commission's reallocation of Channels 60-69 for other purposes. The experiences of the Four LPTV Licensees well illustrate the magnitude of the problem. James J. Chladek has already filed displacement applications for both of his licensed LPTV stations, Island Broadcasting Co. has filed displacement application for all three of its licensed LPTV stations, Minnesota Valley TV Improvement Co. ("Minnesota Valley") expects to file 13

displacement applications within the coming months, and Sage Broadcasting Corporation has filed two displacement applications. Each displacement application has been preceded by a careful engineering analysis in light of the Commission's latest DTV technical advisories and improved computer software. And these analyses do not always identify optimal or even viable displacement channels. Moreover, in terms of costs, Minnesota Valley estimates that it will spend almost \$4000 in engineering fees and equipment costs related to each displacement application that it files.

2. Thus, the Four LPTV Licensees are heartened to note that, in proposing the establishment of an industry coordination committee to assist the Commission in implementing DTV service and evaluating DTV allocation changes, power increases, etc., the Notice proposes a number of measures which specifically relate to the displacement plight of LPTV and TV translator licensees. Moreover, the Licensees applaud the fact that the Notice (¶4) proposes three basic LPTV-sensitive principles to govern the work of any voluntary DTV negotiation or coordination effort that is presented to the Commission for its approval:

- (1) Any voluntary coordination or negotiation effort shall be open to all affected parties, including LPTV broadcasters;
- (2) All requests for modification of the DTV Table of Allotments shall be reviewed by the Commission for their impact on LPTV stations; and
- (3) Industry coordinating committees shall consider LPTV and TV translator stations in developing proposed modifications to the DTV Table of Allocations and should avoid impact on such stations wherever possible.

3. The Licensees' Comments will focus on the following special LPTV/translator-related relief provisions in the Notice:

- The DTV coordinating committee system shall be open to all affected parties, including LPTV and TV translator stations, and the "member-

ship and processes of the DTV coordinating committee system” will be required to include LPTV and TV translator representatives (§§14, 26);

- The DTV coordinating committees shall perform or assist with coordination of LPTV and TV translator station additions/changes, including assisting LPTV and TV translator stations affected by DTV implementation. For example, the coordinators could aid LPTV operators in developing changes in their operation to avoid causing interference to DTV stations or, where necessary, in identifying replacement channels (§16);
- The DTV coordination committee coordinators shall accept and process all request without discriminating among users (§21); and
- The Commission will review and verify the technical evaluations and recommendations of the frequency coordinators and will investigate complaints about errors, improprieties, or abuses (§§22, 24, 27).

II. Specific Comments by the Four LPTV Licensees

A. LPTV Representation on Coordinating Committees

4. When the Notice states (§26) that the leaders of the coordinating committees should be “representative” of all broadcast television interest groups, including LPTV and TV translator stations, this does not necessarily mean that every leader must have an LPTV or translator background. At minimum, the Licensees urge that all leaders should be specially knowledgeable about, and sympathetic to, LPTV/translator issues and problems. Moreover, where an individual coordinating committee has several members and is located in an area with many LPTV or TV translator stations, the Licensees believe that there certainly should be at least one member of the committee with a special LPTV or TV translator background or affiliation.

B. Special Assistance to LPTV and TV Translator Stations

5. With respect to Paragraph 16 of the Notice, the Licensees are strongly in favor of allowing local industry committees to coordinate LPTV and translator changes and to

assist LPTV and translator stations affected by DTV changes. Every time an existing or proposed DTV station moves, changes channel or coverage, or increases power, it affects LPTV and translator stations. The Licensees interpret Paragraph 16 as codifying the three principles of LPTV concern and coordination specified in Paragraph 4 of the Notice (see Paragraph 2 above). We read Paragraph 16 as requiring that industry coordinating committees shall at least consider the impact on LPTV and translator stations when making or proposing DTV changes. In addition, Paragraph 16 envisions that the committees will extend themselves in actively assisting LPTV or TV translator stations in developing changes in their operation to avoid causing interference to DTV stations or, where necessary, in identifying replacement channels. Such active assistance should help the Commission to fulfill its oft-stated goal of trying to preserve as many LPTV and TV translator stations as possible during the DTV transition. Moreover, such help may reduce the LPTV/translator displacement application costs noted in Paragraph 1 above.

**C. Non-Discriminatory Committee Work; FCC Review
And Verification; Investigation of Complaints**

6. It is axiomatic that industry coordinating committees must conduct their work with impartiality and in a non-discriminatory manner, as envisioned in Paragraph 21 of the Notice. It is only on that basis that the Commission can delegate any of its regulatory authority to a non-governmental organization. Likewise, the Commission must review and verify the technical evaluations and recommendations of the industry coordinators “on a routine basis” (Notice ¶26) to ensure that the Committees’ data bases and conclusions are technically correct and that consistent coordination policies are being developed and applied on a nationwide basis. Finally, a procedure must be in place for investigating complaints by broadcasters and the public. Of course, the Commission’s many years of experience with frequency coordinators in the

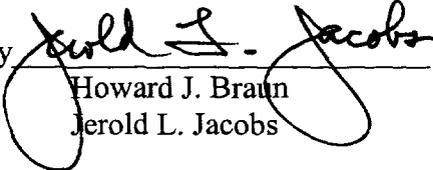
private mobile services and the fixed services, noted in Paragraphs 6-8 of the Notice, will stand it in good stead in administering the DTV coordinating committees.

WHEREFORE, in light of the foregoing, the Four LPTV Licensees respectfully request that the Commission should adopt a Report and Order in this proceeding consistent with the Licensees' Comments. That Report and Order should establish industry coordination committee procedures for DTV implementation with special attention to the needs and concerns of LPTV and TV translator stations. *The Licensees urge that such attention to LPTV/translator needs and concerns is vitally important in order to prevent unnecessary displacement or silencing of LPTV and TV translator stations and to foster the stability and viability of these important broadcast services during and after the DTV transition and rollout.*

Respectfully submitted,

JAMES J. CHLADEK
ISLAND BROADCASTING CO.
MINNESOTA VALLEY TV IMPROVEMENT
CORPORATION
SAGE BROADCASTING CORPORATION

By


Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
805 15th Street, N.W. 9th Floor
Washington, D.C. 20005
(202) 216-4600

Their Attorneys

Dated: March 29, 1999