

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

In the Matter of)	
)	MM Docket No. 00-10
Establishment of a Class A)	MM Docket No. 99-292
Television Service)	RM-9260

To the Commission:

**COMMENTS OF
NATIONAL RELIGIOUS BROADCASTERS ASSOCIATION**

I. Introduction

On November 29, 1999, Congress enacted the Community Broadcasters Protection Act of 1999 ("CBPA") which requires that the Commission prescribe regulations establishing a Class A television license available to licensees of qualifying low-power television ("LPTV") stations. In response to the CBPA, the Commission initiated this proceeding to implement the Community Broadcasters Protection Act by **Order and Notice of Proposed Rule Making**, FCC 00-16, Released January 13, 2000 (the "NPRM"). The National Religious Broadcasters Association ("NRB") hereby states its Comments in response to the NPRM.¹

II. Background

As the Commission noted in the NPRM, LPTV stations may be the only television station in an area providing local news, weather, and public affairs programming. Even in some well-served markets, LPTV stations provide the only local service to residents of discrete geographical communities within those markets. Moreover, many LPTV stations air "niche" programming, often locally produced, to residents of specific ethnic, racial, and special interest communities within the

¹ These comments are being filed on February 10, 2000 and, therefore, are timely. Many of the members of NRB hold LPTV licenses.

larger area, including programming in foreign languages.

The transition to DTV is already having significant adverse effects on many LPTV stations. Congress sought in the CBPA to address some of these issues by providing certain low power television stations “primary” regulatory status.

III. Discussion

Certification and Application for License

Within 60 days of the date of enactment, licensees intending to seek Class A designation are permitted to submit to the Commission a certification of eligibility based on the applicable qualification requirements. Absent a material deficiency in a licensee’s certification of eligibility, the Commission shall grant the certification of eligibility to apply for Class A status. Licensees may, within 30 days after final regulations implementing the CBPA are adopted by the Commission, submit an application for Class A designation. The Commission has 30 days after receipt to act on applications that meet applicable interference and other criteria.

The NPRM asserted that one issue not addressed by the statute is whether LPTV stations must apply for a Class A license within the time frame established in the legislation, or whether the Commission may continue to accept and approve applications from qualifying LPTV stations to convert to Class A status in the future.

NRB respectfully submits that Congress intended that the eligibility for Class A licenses should be on-going, rather than limited to those stations meeting the criteria on the date of adoption of the act. Otherwise a most arbitrary outcome results where, for no reason other than when the station commenced operations, a community or interest group might be denied the only television service which meets local informational, educational, cultural, religious or entertainment needs and interests.

As existing stations meet the criteria in the future, they also should be granted Class A status. The viewers of those stations are entitled to rely on the same expectations as viewers of Class A stations will have that service will not be withdrawn. To determine otherwise would be arbitrary and capricious and contrary to the public interest. A station which might have commenced operations less than 90 days before the CBPA was adopted, but otherwise qualifies, should be eligible for Class A status after it has operated for 90 days. Similarly, a station which might have been in the process of adding equipment necessary to produce local programming or more local programming should be eligible for a Class A license after it has broadcast the required local programming for 90 days and otherwise meets the criteria for a Class A license.

Class A Stations that are currently authorized but not on the air, those authorized in the future, and the viewers of those stations, should be protected to the same degree that stations and viewers of stations which qualify initially under the CBPA for Class A status are to be protected. Stations that have recently commenced operations and those that will commence operations in the future will face the same hurdles, including funding and displacement concerns, that LPTV permittees and licensees have faced heretofore.

Class A Protected Service Area

The service area of an LPTV station should be protected from the date a certification for eligibility is filed with the Commission, as long as the certification is ultimately granted by the Commission.

The CBPA permits the Commission to establish alternative criteria for Class A eligibility if it determines that the public interest, convenience and necessity would be served thereby, or for other reasons. NRB urges the Commission to broadly construe this provision to be a “savings” clause

for licensees and the viewers of those stations which meet the general criteria for qualification, but have not for the 90 day period been in compliance with all of the Commission's general and operating rules (such as those governing transmitter power output, EAS and children's television programming reports). NRB urges that unless the facts would, after a hearing, cause the Commission to revoke a full power station's license, failure to comply with one or more technical rules should not bar issuance of a Class A license.²

Under the CBPA, a Class A station may choose digital operation. NRB believes that the intent of the statute is that where spectrum is available on channels 2-51, Class A licensees may seek a second 6 MHz channel for digital use during the same period that full power licensees may broadcast on two channels. NRB also urges that the intent of the CBPA is that Class A LPTV licensees may seek authorization to convert their stations to digital operation (either full or part time) and that under the Statute, the Commission is obligated to grant such applications unless interference to a protected station would result.

Qualifying Low-Power Television Stations

² NRB urges that no question of lack of candor should exist regarding any licensee which discloses non-compliance with one or more rules in its application for Class A license, but did not make such disclosure in its certification or eligibility, in view of the long-standing policy of the Commission that LPTV is a "de-regulated" service and the confusion or lack of understanding that many licensees may have had regarding which rules applied to LPTV. Similarly, the fact that a particular station may have been licensed as a TV translator station (rather than a LPTV station) should be immaterial to whether a station is eligible for a Class A license.

Eligibility Criteria. Without doubt, an LPTV station may qualify for Class A status if, during the 90 days preceding the date of enactment of the statute: (1) the station broadcast a minimum of 18 hours per day; (2) the station broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; (3) the station was in compliance with the Commission's requirements for LPTV stations; and (4) from and after the date of its application for a Class A license, the station is in compliance with the Commission's operating rules for full-power television stations. Further, Section (f)(2)(B) of the CBPA provides that a station may qualify for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission." NRB urges that the criteria specified in the CBPA are the maximum qualifications that can be applied to determine eligibility, but that Congress intended for the Commission to liberally grant Class A status to other stations that for one reason or another do not (or as the date of the CBPA did not) meet the criteria.

NRB believes that under the CBPA, a Class A station's "market area," should be defined, as the station's protected service area **plus** that area in which it actually has regular viewers. With respect to a group of commonly controlled stations, NRB urges that the "market area" of such stations should be the composite of the market areas of the individual stations in the commonly-owned group.

In the NPRM, the Commission inquired whether some programming, including commercials, should be counted toward the minimum amount of local programming. NRB believes

that any intrusion into, or rules based on, the content of broadcast programs, including disallowance of commercial time from the minimum local programming component of the rules is inappropriate and unwise. Exclusion of commercial time from being counted toward the minimum local time provision would place great burdens on LPTV licensees administratively and be contrary to the intent of the CBPA. Payment to the station for the air time in which a church service is broadcast does not affect the value of the availability of that local programming to the station's viewers.

Viewers often find spot advertisements for local businesses informative and an efficient way to select providers of goods and services. Many businesses and organizations find it prohibitively expensive to buy air time on full power stations that serve wide areas but economically viable to purchase air time for their commercials on LPTV stations. Thus, there is no reason to conclude that the public interest requires, or Congress intended, that in determining compliance with the local programming time component of the CBPA, programming which otherwise qualifies should be excluded.

Application of Part 73 Rules. Many Class A stations can not comply with the requirement of Section 73.685(a) that stations provide a specified level of coverage to their community of license. NRB believes that there is no need for Class A stations to place a particular signal level over a particular geographical-political area. Moreover, to require stations to place a minimum signal level over a specified community or portion of it for the first time at this juncture would be contrary to the intent of Congress. Such a requirement would force many licensees to seek to alter their community of license to specify a community over which they would place the requisite signal, resulting in massive delays and administrative work for the Commission and licensees, without palpable benefit, as licensees would be forced to seek changes to their stations' communities of license as part of the Class A license application process.

Alternative Eligibility Criteria. Section (f)(2)(B) of the CBPA permits the Commission to establish alternative eligibility criteria for Class A designation if the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying LPTV station for purposes of this section, or for other reasons determined by the Commission.

NRB respectfully submits that stations that have not been on the air for 90 days or have not met the maximum eligibility requirements of the CBPA for the 90 days prior to adoption of the CBPA should be permitted to convert to Class A status at such time as the station has met the eligibility criteria for the 90 day period.

Issuance of DTV Licenses to TV Translator and LPTV Stations

The CBPA provides that the Commission is not required to issue an additional DTV license to a Class A station licensee or to a licensee of a TV translator, but the Commission “shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the [DTV] application.” NRB believes that the Commission should authorize a paired channel for DTV operation if the Class A or TV translator station licensee identifies and applies for an acceptable channel.

Interim Qualifications

Stations Operating Between 698 and 806 Megahertz. Section (f)(6)(A) of the Act provides that the Commission may not grant a Class A license to an LPTV station for operation between 698 and 806 megahertz (television broadcast channels 52 – 69). Thus, only LPTV stations operating on channels in the core spectrum (television broadcast channels 2 through 51) are eligible for Class A status. That section also provides, however, that the Commission shall provide to LPTV stations assigned to and temporarily operating between 698 and 806 megahertz the opportunity to meet the qualification requirements for a Class A license. If a qualified Class A applicant is assigned a channel within the core spectrum, the statute further provides that the Commission shall issue a Class A license simultaneously with the assignment of the in-core channel. NRB submits that

protection of the contours of a Class A station operating between 698 and 806 megahertz is not inconsistent with the provisions of the CBPA. While a Class A license may not be issued to a station operating on a non-core channel, it should be protected against interference on the same basis as are Class A licensed stations. When a station that is otherwise qualified for Class A status seeks a construction permit on an in-core channel, the facilities specified in that application should be protected until the station is constructed and licensed or the application denied or the permit lapsed.

Channels Off-Limits. The Commission's determination of what channels are in the core spectrum has changed while the CBPA was being drafted and adopted. NRB submits that the intent of Congress was that Class A licenses should be available on any in-core channel.

Allotment Adjustments. Should the Commission find it necessary to correct unforeseen technical problems among DTV stations, if the modification requires displacement of a Class A station, the affected Class A station should be permitted to exchange channels with the DTV station or given the maximum assistance possible in acquiring another channel. Filing window procedures should not apply to such applications.

Class A Applications

Initial Class A Licenses. Class A status should be granted to qualified LPTV stations as a modification of a station's license. While the NPRM proposed that initial Class A applications be limited to the conversion of existing facilities to Class A status, with no accompanying changes in those facilities, if a community of license coverage type of rule were adopted, the Commission must allow the filing of applications to change a station's community of license at the same time as Class A license applications are filed and be considered with them. If the Commission prohibits changes to facilities at the same time as Class A license applications are filed, the contours of presently pending

applications, applications filed after the filing of an application for a Class A license, and construction permits that have been granted should be protected.

Applicants must be permitted to correct deficiencies identified by the processing staff. The time limits set in the CBPA for action by the Commission can be “tolled” for as long as it takes an applicant to cure a deficiency noted by the staff, if necessary. As long as the Commission can identify the station to which an application pertains and a contact person and address at which the contact person can be reached, there should be no reason for rejection of an application that may be incomplete or contain errors.

Application Forms. Where no modification of facilities is associated with a Class A station license, there should be no need for a lengthy application. Technical information is already on file for stations and associated with their license files, as is information regarding the address of the licensee. Much of the information that would have to be supplied on either Form 302 or Form 347 would duplicate that already on file or be irrelevant. A new form should be adopted which requires the least information necessary or the Commission must clearly state which questions on the form to be used need not be answered. The Commission should permit, but not require, Class A license applications to be filed electronically.

Class A Facilities Changes. Class A stations should be permitted to seek authorization for increased power, up to the limits of the service, outside of the window and auction procedures, provided their proposals meet all interference protection requirements.

Coverage Requirements. The CBPA does not include a coverage requirement as a criteria for Class A status. Therefore, it would be inappropriate for the Commission to adopt a coverage requirement. Many LPTV stations do not operate with sufficient power to serve large

communities. And, many can not operate with even the present power limits for Class A stations due to the need to protect other stations. Therefore, adoption of a minimum coverage requirement would be inappropriate and contrary to the intent of Congress.

Remaining Issues. No fee should be charged for the filing of an application by a current licensee to convert to Class A status. If classified, Class A license applications should be considered minor modifications.

IV. Conclusion

In conclusion, NRB respectfully urges that the Commission adopt rules implementing the CBPA that permit the most robust development of Class A television service, consistent with the provisions of the CBPA that protect full power stations and their DTV facilities. NRB urges that there should be no requirement to place a particular signal level over all or a portion of the community of license. Class A licenses should be available for stations that: fully meet all of the criteria as specified in the CBPA and are eligible for an a license initially; will qualify (other than the 90 day qualifying period having been completed prior to the adoption of the CBPA); and, to those who would qualify except for noncompliance with one or more of the Commission's rules during the 90 day period.

Respectfully submitted,

National Religious Broadcasters Association
by its Counsel,

(Signed)

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