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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

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Dated: February 10, 2000

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SUMMARY

Sinclair Broadcast Group, Inc. ("Sinclair") urges the Commission to effectuate the intent of Congress in passing the Community Broadcasters Protection Act of 1999 ("CBPA") by ensuring that only those "small number" of low power television stations ("LPTVs") envisioned by Congress qualify for Class A status. To do so, the Commission must strictly adhere to the three requirements for Class A status listed in Section (f)(2)(A) of the CBPA and refrain from reading the "public interest, convenience, and necessity" clause of (f)(2)(B) as a broad mandate to grant Class A status to LPTVs that do not meet the qualification requirements. Further, Sinclair urges the Commission to avoid reading Section (f)(2)(B) as authority to grant or accept Class A applications outside of the strict time frame provided by Congress.

The Commission must also ensure that the establishment of a protected Class A service does not unduly impede the DTV transition. Interference problems between full service DTV and NTSC broadcasters will almost certainly arise once all stations begin DTV operations. At this point in the DTV transition, it is unclear what the extent of these problems will be and what engineering solutions will be needed to resolve them. Full service broadcasters must be allowed to change transmitter sites, change channels, increase power, or adopt some other engineering solutions to rectify these conflicts. While the establishment of Class A LPTV service will limit the flexibility broadcasters will have in crafting these solutions, the Commission can take steps to ensure that full service broadcasters retain some flexibility. Specifically, the Commission should strive to (i) afford full service broadcasters flexibility to make allotment adjustments; (ii) protect all full service stations seeking to replicate or to maximize DTV power, regardless of technical problems; (iii) preserve the right of full service DTV broadcasters to maximize on their original

analog channel after the DTV transition; (iv) require Class A stations to protect the Grade B contour of full service NTSC stations that modify their NTSC facilities in order to collocate with their DTV facilities or with the facilities of other broadcasters in the same market, at least until May 1, 2002; and (v) require Class A stations to protect the maximum facilities of full service NTSC stations, until at least May 1, 2002.

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Sinclair Broadcast Group, Inc. ("Sinclair"), by its attorneys, hereby files these "Comments" in the above-captioned proceeding[1] initiated by the Commission to implement the Community Broadcasters Protection Act of 1999 ("CBPA").[2] As Congress explicitly states in the "Findings" section of the CBPA, a "*small* number" of low-power television ("LPTV") stations presently serve the public interest by providing programming to their communities that would not otherwise be available.[3] It is this "small number" of LPTV stations the Congress seeks to protect by affording Class A primary status, not the approximately 1600 LPTVs filing certificates of eligibility for Class A status on January 28, 2000.[4]

Like all full-service television broadcasters, Sinclair has invested significant resources in the transition to digital television ("DTV"). With doubts about the Commission-mandated 8-

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[1] Establishment of a Class A Television Service, *Order and Notice of Proposed Rule Making*, MM Docket No. 00-10, MM Docket No. 99-292, RM-9260 (Jan. 13, 2000) ("*CBPA NPRM*").

[2] Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999) ("CBPA") (emphasis added).

[3] CBPA, § 5008(b)(1).

[4] *See* Statements of Eligibility for Class A Low Power Television Station Status Tendered for Filing, *Public Notice* (Feb. 8, 2000).

VSB digital modulation standard growing[5] and outstanding DTV construction permit applications still pending, the future of DTV for full service broadcasters is less than certain. The Commission must afford full service broadcasters the flexibility to modify and upgrade their facilities to account for the inevitable problems that will arise when all full-service DTV stations begin operations. With the CBPA, however, an additional layer of uncertainty is added to the DTV transition by now requiring full-service DTV and NTSC broadcasters to protect Class A LPTV stations. Sinclair urges the Commission to not allow the CBPA to impede the transition to DTV or limit full-service broadcasters' flexibility anymore than absolutely necessary. By strictly adhering to the requirements for Class A status, the Commission can ensure only those "small number" of LPTV stations envisioned by Congress receive Class A status.

Background

Sinclair, among the nation's largest group television owners, is the licensee of approximately sixty full service television stations, and programs many other full service stations pursuant to time brokerage agreements. Given the magnitude of its broadcast interests, Sinclair

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[5] On October 8, 1999, Sinclair filed a Petition for Rulemaking urging the Commission to afford broadcasters the flexibility to use either Coded Orthogonal Frequency Division Multiplexing ("COFDM") or the Commission-mandated 8-VSB as the modulation standard for DTV. Petition for Expedited Rulemaking, Sinclair Broadcast Group, Inc. (October 8, 1999) ("*Sinclair Petition*"). Although the Commission recently dismissed the *Sinclair Petition*, it nonetheless commended Sinclair for identifying DTV receiver performance concerns and invited parties to comment on the DTV standard in connection with the Commission's biennial review of the DTV transition. *See* Letter from Magalie Roman Salas, Secretary, FCC, to Martin R. Leader, Counsel for Sinclair Broadcast Group, Inc., FCC 00-35 (Feb. 4, 2000). Given that hundreds of stations supported the *Sinclair Petition*, it is likely that many will urge the Commission in that proceedings to afford broadcasters the flexibility to use COFDM.

has a huge stake in the development of DTV.[6]

In September 1997, the Community Broadcasters Association filed a Petition for Rulemaking ("*CBA Petition*") proposing a Class A service for qualifying LPTV stations. In April 1998, the Commission gave public notice of the filing of this petition and asked for comment.[7] Many full service broadcasters objected to the *CBA Petition*, noting that the creation of a Class A LPTV service would limit the ability of full service stations to modify or upgrade their facilities and would confound the DTV transition.[8] Despite these concerns, the Commission released a Notice of Proposed Rulemaking in September 1999 seeking comment on its proposed creation of a form of primary, Class A status for qualifying LPTV stations.[9] Before comments were due in response to this NPRM, Congress passed the CBPA. Recognizing that the CBPA "addresses many of the same issues" raised in the *CBA Petition* and the *CBA NPRM*,[10] the FCC

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[6] In addition to its Petition regarding the DTV modulation standard, Sinclair has been an active commenter before the Commission and Congress in matters relating to DTV. Sinclair was one of the first broadcasters to recognize that the low DTV power levels assigned to UHF stations would prevent these stations from providing adequate service to their core market areas, and was at the forefront of the effort that led the Commission to raise its DTV power ceiling for these UHF licensees. *See* Petition for Reconsideration, Sinclair Broadcast Group, Inc., MM Docket No. 87-268 (June 13, 1997); Advanced Television Systems and Their Impact on the Existing Television Broadcast Services, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, ¶¶ 58-85 (1998) ("*Sixth Recon Order*").

[7] *See* Petition for Rulemaking Filed for "Class A" TV Service, *Public Notice* (April 21, 1998).

[8] *See infra* note 17.

[9] Establishment of a Class A Television Service, *Notice of Proposed Rule Making*, MM Docket No. 99-292, RM-9260 (Sept. 29, 1999) ("*CBA NPRM*").

[10] *CBPA NPRM* ¶ 2.

terminated the proceeding on the *CBA Petition*.[11] In its place, the Commission initiated the present proceeding to implement the CBPA.[12]

Discussion

I. The Commission Must Strictly Adhere to the Requirements for Class A Status to Ensure That Only Those "Small Number" of LPTV Stations Envisioned by Congress Receive Class A Status

A. There Is Insufficient Broadcast Spectrum to Accommodate All LPTV Stations During the DTV Transition

The DTV Table of Allotments and the entire transition to DTV have been predicated on the conclusion that LPTV will remain a secondary service and that many LPTV stations will be displaced by full service DTV stations during the transition to DTV. Indeed, as the Commission concluded that in the *Sixth Report and Order*:[13]

> In providing all full service TV stations with a second DTV channel, . . . it will be necessary to displace a number of LPTV and TV translator operations, especially in the major markets. This determination was based on studies by our staff and by our Advisory Committee on Advanced Television Service (Advisory Committee) that indicate there is insufficient spectrum available in the broadcast TV bands to factor in low power displacement considerations in making DTV allotments. . . *[D]uring the transition there is simply not enough available spectrum to preserve all existing translators and LPTV stations*."[14]

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[11] *See* Establishment of a Class A Television Service, *Order*, MM Docket No. 99-292, RM-9260 (Dec. 14, 1999).

[12] Throughout these Comments, the present proceeding is referred to as the *CBPA NPRM*.

[13] Advanced Television Systems and Their Impact on the Existing Television Broadcast Services, *Sixth Report and Order*, 12 FCC Rcd 14588 (April 21, 1997) ("*Sixth Report and Order*").

[14] *Id.* ¶ 141 (emphasis added). The Commission has also recognized that "As a general matter, measures to accommodate low power stations would, by their very nature, pose restrictions on our choice of allotments for full service DTV stations." *Sixth Recon. Order* ¶ 107.

Nothing has changed to alter this conclusion. There is still insufficient spectrum to accommodate all LPTV stations during the DTV transition. The Commission has done all it could to ease the transition to DTV for LPTV stations by allowing LPTV stations that are displaced by full service DTV stations or allotments to file for replacement channels.[15] The Commission considered these displacement relief applications on a first-come, first-served basis and afforded them priority over all other LPTV applications. Despite these efforts, the simple fact is that not all LPTV stations can continue to operate during the DTV transition due to a lack of spectrum. With the CBPA, however, Congress has attempted to save those very few LPTV stations who are truly serving the public interest as indicated by their satisfaction of the three requirements stated in section (f)(2)(A).[16]

B. A Class A LPTV Service Will Impede the DTV Transition

The Congressionally mandated protection of certain LPTV stations provided by the CBPA will inevitably lead to headaches in the DTV transition. As indicated in the comments on the *CBA Petition*, a Class A LPTV service will impede full service broadcasters attempts to modify and upgrade their facilities.[17] According to the Commission's own figures, as of January

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[15] *See Sixth Recon. Order* ¶¶ 115-118.

[16] CBPA, § 5008(f)(2)(A).

[17] *See* Comments of Cox Broadcasting, Inc. in RM-9260 at 2-3 ("The introduction of a Class A service would interfere with the roll-out of DTV. The interjection of a protected class of low power stations will effectively limit or preclude full power stations' options to modify their DTV facilities."); Opposition of the Association for Maximum Service Television, Inc. in RM-9260 at 1-2 ("The DTV Table, and the ability of full power licensees to implement DTV by FCC and Congressional deadlines, is premised on the secondary status of low power services. Changing that premise now, particularly when there are so many DTV implementation challenges, could create chaos in many markets. Such a change would also reduce the critical flexibility that the Commission built into the

12, 2000, 79 percent of stations have filed their DTV construction permit applications, but only 21 percent have been granted.[18] Further, while many broadcasters have filed DTV maximization applications pursuant to the 2%/10% *de minimis* interference criteria, it is not clear how these maximization plans will work in actual practice until broadcasters are actually on the air. Thus, while interference problems between full service DTV and NTSC broadcasters will almost certainly arise once all stations begin DTV operations, it is unclear at this point what the extent of these problems will be and what engineering solutions will be needed to resolve them. Full service broadcasters must be allowed to change transmitter sites, change channels, increase power, or adopt some other engineering solution to rectify these conflicts. The establishment of Class A LPTV service will likely limit the flexibility broadcasters will have in crafting these solutions. Indeed, the Commission itself has recognized that is too early in the DTV transition to consider establishing another class of primary broadcast stations, noting that "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."[19] While the CBPA effectively overrules this conclusion, it does so only with respect to a select few LPTV stations.

DTV Table to facilitate the DTV transition and maximize its benefits."); Comments of the National Association of Broadcasters in RM-9260 at 4 ("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.").

[18] *Summary of DTV Applications Filed* (visited February 7, 2000) <http://www.fcc.gov/mmb/vsd/files/dtvsum.html>.

[19] *Sixth Recon. Order* ¶ 106.

C. Congress Intended for Only a "Small Number" of LPTV Stations to Qualify for Class A Status

By staying true to Congress' vision that only a "small number" of LPTV stations are worthy of Class A status, the Commission can limit the deleterious effects the CBPA will have on the DTV transition for full service broadcasters. In addition to the "Findings" section of the CBPA,[20] the Conference Report on the CBPA also sheds light on Congress' intent that not all LPTV stations will qualify for Class A status:

> The conferees recognize that, because of the emerging DTV service, not all LPTV stations can be guaranteed a certain future. Moreover, it is not clear that all LPTV stations should be given such guarantee in light of the fact that many existing LPTV stations provide little or no original programming service.[21]

In addition, as the Commission recognizes, Congress also enacted the CBPA with the intent to protect "the ability of [full service stations] to provide both digital and analog services"[22] and "to protect the ability of DTV stations to replicate and maximize service areas."[23] Sinclair urges the Commission to implement the CBPA with these Congressional goals in mind.

D. To Effectuate the Intent of Congress, the Commission Must Strictly Adhere to the Requirements of Section (f)(2)(A)

In Section (f)(2)(A) of the CBPA, Congress establishes clear requirements for an LPTV

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[20] CBPA, § 5008(b)(1) ("a small number of license holders have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available").

[21] H.R. Rep. No. 106-464 (1999).

[22] *CBPA NPRM* ¶ 6.

[23] *Id.* ¶ 33.

station to establish itself as a "qualifying low-power television station."[24] Congress intended for only a "small number" of LPTV stations to qualify for Class A status, and it is with the requirements of Section (f)(2)(A) that Congress limits the field of potential Class A stations.[25] As discussed below, to ensure that only this "small number" of LPTV stations qualify for Class A status, the Commission must strictly adhere to these requirements.

First, Section (f)(2)(A)(i) clearly establishes that the requirements of Section (f)(2)(A)(i)(I)-(III) must have been met during the period from August 31, 1999 until November 28, 1999, inclusive.[26] The language of Section (f)(2)(A)(i) provides for no exceptions. An LPTV station that began operations on September 1, 1999 or was off the air for only one day during this period simply does not qualify for Class A status.

Second, Section (f)(2)(A)(i)(I) provides that the station must have broadcast a minimum of 18 hours per day from August 31, 1999 until November 28, 1999, inclusive.[27] This section, unlike Section (f)(2)(A)(i)(II), does not allow for an average number of programming hours. That is, a station that broadcast an *average* of 18 hours per day during this period does not

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[24] CBPA, § 5008(f)(2)(A).

[25] Senator Moynihan of New York provides WEBR-LP as an example of the type of station Congress envisions as qualifying for Class A status: WEBR-LP "*exemplifies exactly the type of low power station* that should have the opportunity to achieve Class A status. WEBR(LP) has a demonstrated strong commitment to the local Korean community in New York, providing *locally originated programming 24 hours a day, 7 days a week.*" Congressional Record - U.S. Senate at S14989, November 19, 1999 (emphasis added).

[26] CBPA, § 5008(f)(2)(A)(i). The text of Section (f)(2)(A)(i) provides that the requirements of Sections (f)(2)(A)(i)(I)-(III) must have been met "during the 90 days *preceding* the date of the enactment" of the CBPA. Because the CBPA was enacted on November 29, 1999, this 90-day period ends on November 28, 1999.

[27] CBPA, § 5008(f)(2)(A)(i)(I).

qualify for Class A status. Rather, the language clearly indicates that the station must have broadcast a minimum of 18 hours each and every day during the period. A station that broadcast only 17 hours during one day during this period does not qualify under Section (f)(2)(A).

Third, Section (f)(2)(A)(i)(II) provides that the station must have broadcast an average of a least three hours per week of programming produced within the "market area" served by the station.[28] Sinclair agrees with the Commission's tentative conclusion that repeated programming and locally produced commercials will not count towards this three hour minimum.[29] As indicated in the Conference report, Congress recognized that "it is not clear that all LPTV stations should be given such guarantee [of Class A status] in light of the fact that many existing LPTV stations provide little or no *original* programming service."[30] Thus, Congress did not intend for an LPTV station that locally produces one hour of programming, but repeats it three times in a week, to qualify under this prong. Such programming does not qualify as original.

The Commission also asks for comment on how to define "market area" under Section (f)(2)(A)(i)(II) and tentatively concludes that "market area" be defined as the station's "protected service area." This definition is far too broad to effectuate the intent of the CBPA. With the CBPA, Congress intended to protect broadcasters that focus their programming on a specific *community*, a more narrow geographic region than a station's entire protected service area. Indeed, three of the five "Findings" of Congress in Section (b) of the CBPA refer to

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[28] CBPA, § 5008(f)(2)(A)(i)(II).

[29] *CBPA NPRM* ¶ 19.

[30] H.R. Rep. No. 106-464 (1999).

"communities."[31] Thus, a more appropriate definition for a "market area" is the LPTV station's community of license, not the entire protected service area.

Sinclair also urges the Commission to refrain from reading the "public interest, convenience, and necessity" clause of Section (f)(2)(B) as a grant of authority to confer Class A status on LPTV stations that clearly do not meet the requirements of Section (f)(1)(A). Rather, in applying Section (f)(2)(B), Congress must balance the interest in granting a Class A license to an LPTV station that does not meet the requirements of (f)(2)(A) with the effect such a grant will have on the flexibility of full service DTV stations to modify their facilities and the effect on the DTV transition in general. The Commission should also provide notice and comment from interested parties before applying the public interest provision of Section (f)(2)(B).

Finally, Sinclair urges the Commission to adopt reporting requirements for Class A stations to ensure that they are in compliance with Section (f)(2)(A)(ii), which requires that a Class A station comply with the Commission's operating rules for full power stations from the date of its *application* for a Class A license. Sinclair agrees with the Commission's conclusion that Class A stations must be subject to all Part 73 rules, such as the children's television programming requirements, main studio rule, the public inspection file rules, and political programming rules.[32]

II. The CBPA Does Not Permit the Commission to Accept Applications to Convert to Class A in the Future

The Commission asks whether LPTV stations must apply for a Class A license within the

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[31] CBPA, § 5008(b).

[32] *CBPA NPRM* ¶ 20.

time frame established by the CBPA, or whether the Commission can continue to accept Class A applications in the future.[33] On this point, the CBPA is clear and unambiguous. Section (f)(1)(B) provides that within 60 days of the date of enactment of the CBPA (i.e., by January 28, 2000), "licensees intending to seek Class A designation *shall* submit . . . a certification of eligibility."[34] Thus, the mandatory language of Section (f)(1)(B) limits the potential pool of Class A LPTV stations to only those LPTV licensees who have filed a certificate of eligibility by January 28, 2000. The permissive language of Section (f)(1)(C) provides that a LPTV licensee "may" apply for Class A status within 30 days after final regulations are adopted.[35] This language is merely intended to reflect Congress' vision that those licensees who have filed a certificate of eligibility must file an application for Class A status within 30 days of final regulations if they seek Class A status, but, if the LPTV licensee no longer seeks Class A status, it is by no means *required* to file a Class A application.

Subsection (f)(2)(B) does not confer upon the Commission authority to grant a Class A license to an LPTV licensee which has not filed a certificate of eligibility by January 28, 2000, as required by section (f)(1)(B). Subsection (f)(2)(B) must be read in the context of subsection (f)(2), which establishes the requirements for a "qualifying low-power television station." Subsection (f)(2)(B) merely gives the Commission the authority to find that a station is a "qualifying low-power television station" even though the station does not meet all of the

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[33] *Id.* ¶ 9.

[34] CBPA, § 5008(f)(1)(B).

[35] CBPA, § 5008(f)(1)(C).

requirements of (f)(2)(A).[36] To even reach this determination, however, the station must have filed a certificate of eligibility by January 28, 2000. Thus, the CBPA does not give the Commission the authority to accept applications to convert to Class A status in the future based on the "public interest, convenience necessity" clause of subsection (f)(2)(B).

The Commission also asks whether, if it does not have authority to accept applications to convert to Class A status in the future, whether it should nevertheless accept such applications "as a matter of policy."[37] For the reasons stated above regarding the deleterious effects the creation of a Class A LPTV service will have on the DTV transition and the flexibility of full service broadcasters to modify their facilities, Sinclair urges the Commission to refrain from accepting Class A applications in the future. First with displacement relief applications and now with the CBPA, the Commission and Congress have tried mightily to ensure that the transition to DTV will not be too burdensome for LPTV stations. By accepting additional Class A applications beyond the time frame established by Congress, the Commission will impede the DTV transition to the detriment of full service broadcasters and the American television viewing public.

III. The Commission Must Afford Full Service Broadcasters Flexibility to Make Allotment Adjustments

Section (f)(1)(D) allows a DTV station to change its allotted parameters or its channel assignment, where made necessary by technical problems, in order to ensure both replication and

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[36] CBPA, § 5008(f)(2)(B). For the reasons stated above, Sinclair urges the Commission to refrain from using this authority to grant a Class A license to a LPTV station that clearly does not qualify under subsection (f)(2)(A).

[37] *CBPA NPRM* ¶ 9.

maximization of the station's DTV service area (assuming the station has complied with the "notice of intent to maximize" and application requirement). The Commission correctly assumes that this section affords full service broadcasters the flexibility to make allotment adjustments even after an LPTV station has certified its eligibility for Class A status.[38] The Commission questions, however, whether a full service broadcaster that seeks an allotment adjustment that will impinge on the service area of a Class A station must demonstrate that its proposed allotment adjustment is the only means to resolve the technical problem.[39] Based on the silence of the statute, Sinclair submits that a full service broadcaster does not have to make such a showing. Nowhere in text of Section (f)(1)(D) is a requirement that a full service broadcaster adopt the least burdensome means to a Class A station of resolving the technical problem at issue. Rather, Section (f)(1)(D) plainly allows a full service broadcaster to adjust its allotments or change its channel assignment to resolve a technical conflict in the manner it deems most appropriate, regardless of the effect on a Class A station. With Section (f)(1)(D), Congress has attempted to restore to full service broadcasters some of the flexibility with respect to allotment adjustments they will lose because of the establishment of a Class A LPTV service.[40] By reading a "least burdensome means" test into Section (f)(1)(D), the Commission will deprive full service broadcasters of much of this flexibility.

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[38] *Id.* ¶ 36.

[39] *Id.* ¶ 37.

[40] *See supra* note 17.

IV. Class A Applicants Must Protect All Stations Seeking to Replicate or to Maximize DTV Power, Regardless of Technical Problems

As the Commission correctly illustrates, Section (f)(1)(D) requires a Class A applicant to protect a full service DTV station seeking to replicate or maximize its service area only if the DTV station has complied with the notification and application requirements of Section (f)(1)(D) and if "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment."[41] Section (f)(7)(ii), however, provides that a Class A applicant must protect a full service DTV station seeking to replicate or maximize power as long as the station has complied with the notification requirement of Section (f)(1)(D).[42] Sinclair concurs with the Commission's conclusion that it would be more consistent with the statutory scheme of the CBPA to require a Class A applicant to protect all stations seeking to replicate and all stations seeking to maximize DTV power (assuming they meet the notification requirement), as provided in Section (f)(7)(ii), regardless of the need to resolve technical problems.[43]

V. The Commission Must Preserve the Right of Full Service DTV Broadcasters to Maximize on Their Original Analog Channel After the DTV Transition

The Commission asks whether a full service DTV station can preserve the right to maximize on its analog channel should it revert to this channel at the end of the DTV transition, particularly considering that many stations will not be able to file a maximization application for

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[41] CBPA, § 5008(f)(1)(D).

[42] CBPA, § 5008(f)(1)(D).

[43] *CBPA NPRM* ¶ 33.

its analog channel by the May 1, 2000 deadline.[44] Sinclair urges the Commission to ensure that full service broadcasters can replicate the maximized service area of their DTV operations on their existing analog channel at the end of the DTV transition despite the existence of interference to a Class A station from such operation. Many full service broadcasters have developed business plans under the assumption that they would relocate their DTV service to their analog channel at the end of the DTV transition. The Commission has emphasized that the channel on which full service broadcasters initiate their DTV service is only temporary in nature[45] and that broadcasters are free to resume DTV operations at the end of the transition on either their analog or DTV channel.[46] Because most viewers are more familiar with a station's analog channel, it is likely that stations will want to continue using this channel after the DTV transition.

Allowing full service broadcasters to replicate their maximized DTV service area on their analog channel at the end of the DTV transition will not be unduly burdensome on Class A

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[44] *Id.* ¶ 15.

[45] *See* Advanced Television Systems and Their Impact on the Existing Television Broadcast Services, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders,* 14 FCC Rcd 1348, ¶ 17 (Dec. 18, 1998) ("the second channel is intended as a temporary additional channel for existing broadcasters for use during the transition, to allow them to move to an improved technology without service disruption").

[46] *See Sixth Report and Order* ¶ 84 ("We also will allow broadcasters, wherever feasible, to switch their DTV service to their existing NTSC channels at the end of the transition if they so desire. Such channel switches would be permitted provided that the station's existing channel is within the final DTV core spectrum."); Advanced Television Systems and Their Impact on the Existing Television Broadcast Services, *Fifth Report and Order*, 12 FCC Rcd 12809, ¶ 11 (April 21, 1997) ("Indeed, use of 6 MHZ channels would facilitate spectrum efficiency because making the DTV channel the same width as the analog channel will afford greater flexibility at the end of the transition in terms of the choice of channel the broadcaster retains for DTV purposes.").

stations, considering that many replacement channels will exist when the Commission recaptures analog broadcast spectrum at the end of the transition.[47] Thus, while Class A stations may have to relocate to another channel to avoid interfering with the maximized service area of a full service DTV station operating on its original analog channel, they will not be displaced entirely.

Not allowing full service broadcasters to replicate their maximized DTV service area on their analog channel will be a disservice to the American television viewing public. If full service broadcasters reverting to their analog channel must accept a lesser service area after the DTV transition, then many viewers who enjoyed DTV programming during the transition will be deprived of that programming when the transition ends.

The fact that a station has not filed a notice of intent to maximize with respect to a particular channel under Section (f)(1)(D) should not preclude that station from maximizing on that channel at the end of the DTV transition.[48] The CBPA specifies only that a "full-power digital television applicant" must file a notice of intent to maximize by December 31, 1999, but does not require that the applicant specify on which channel it intends to maximize. Section (f)(1)(D) also requires a "full-power digital television applicant" to file a "bona fide application for maximization" by May 1, 2000. Again, the text of the statute does not require the applicant to specify a specific channel. Because DTV operations for a station will not revert to the analog channel until December 31, 2006 at the earliest, it would be infeasible for a station to file a

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[47] *See* Reallocation of Television Channels 60-69, the 746-806 MHZ Band, *Report and Order*, 12 FCC Rcd 22953, ¶ 30 (Jan. 6, 1998) ("many more replacement channels will be available at the end of the DTV transition period, when analog stations cease transmitting").

[48] CBPA, § 5008(f)(1)(D).

maximization application by May 1, 2000 for its analog channel. Thus, the Commission should not preclude a full service broadcaster from replicating its maximized DTV service area on its analog channel at the end of the DTV transition if it has not yet filed a maximization application for that channel by May 1, 2000. Rather, the Commission should clarify that a full service broadcaster who has filed a notice on intent to maximize by December 31, 1999, and a maximization application for its DTV channel by May 1, 2000, is protected from Class A stations to the extent of its maximized service area on its digital channel and to the extent of at least the replication of that maximized service area on its analog channel beginning at the end of the DTV transition (and, perhaps, a greater service area depending upon the application of the 2%/10% *de minimis* interference criteria to digital operations on the analog channel) .

VI. The Commission Must Require Class A Stations to Protect the Grade B Contour of an NTSC Station as That Contour Existed on November 29, 1999, or as Proposed in a Pending Application as of November 29, 1999 for a Modification of a License or a Modification of a Construction Permit

Section (f)(7)(A) of the CBPA provides that the Commission may not grant a Class A license or modification of a Class A license if it will interfere with the Grade B contour of "any television station broadcasting in analog format" as that contour existed as of November 29, 1999, or *"as proposed in a change application filed on or before that date."*[49] Sinclair agrees with the Commission's conclusion that this provision requires Class A stations to protect stations actually transmitting in analog format and those for which a construction permit to broadcast in analog format has been granted.[50] What is clear from the text of the statute but the Commission

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[49] CBPA, § 5008(f)(7)(A) (emphasis added).

[50] *CBPA NPRM* ¶ 27.

does not confirm, however, is that a Class A station must also protect the Grade B contour of an NTSC station as proposed in a pending application as of November 29, 1999 for a modification of its construction permit or license. Sinclair requests that the Commission confirm this point.

VII. The Commission Should Require Class A Stations to Protect the Grade B Contour of Full Service NTSC Stations that Modify Their NTSC Facilities in Order to Collocate With Their DTV Facilities or With the Facilities of Other Broadcasters in the Same Market, at Least Until May 1, 2002

The Commission should seek to allow flexibility for full power NTSC stations that seek to collocate their NTSC facilities at the location of their proposed DTV facilities. This flexibility should also apply to multiple broadcasters in a market seeking to collocate their DTV and NTSC facilities on the same tower. Such a relocation of NTSC facilities could alter a station's Grade B contour, which would not be protected from interference from a Class A station under the CBPA if a modification application was not on file by November 29, 1999. Enabling broadcasters to collocate their NTSC and DTV facilities has long been a Commission goal in the DTV proceeding. The Commission recently reaffirmed that:

> Collocation of a station's DTV and NTSC facilities with most of the other television stations in the market was an objective we specifically recognized during our DTV proceedings as a means to speed DTV conversion.[51]

To effectuate this goal, the Commission should require Class A stations to protect the Grade B contour of full service NTSC stations that modify their NTSC facilities in order to collocate with their DTV facilities or with the facilities of other broadcasters in the same market. The Commission should afford this flexibility until at least May 1, 2002, the date on which all

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[51] KRCA License Corp., *Memorandum Opinion and Order*, FCC 99-388, ¶ 18 (Dec. 14, 1999).

commercial DTV stations must begin operations. By this date, plans for the location of NTSC and DTV operations should be finalized. The Commission should also extend this flexibility to NTSC stations that must modify their facilities due to an Act of God.

VII. The Commission Should Require Class A Stations to Protect the Maximum Facilities of Full Service NTSC Stations Until at Least May 1, 2002

Section (f)(7) provides that a Class A station seeking to modify its license must protect the Grade B contour of an NTSC station as it existed on November 29, 1999. The Commission notes, however, that because Class A stations now have primary status, using a "contour protection" analysis to grant changes in Class A facilities could preclude a full service NTSC station from increasing power or antenna height in the future to the maximum extent allowed by the NTSC operating rules.[52] With this in mind, the Commission asks whether Class A stations should protect the maximum facilities of full service stations.

The Commission should require Class A stations to protect the maximum facilities of full service NTSC stations until May 1, 2002. For the reasons indicated above, full service broadcasters may need to modify their NTSC facilities to collocate with their DTV facilities or with the facilities of other broadcasters in the same market. These modifications could entail increasing power or antenna height to the maximum extent allowed under the NTSC operating rules. Thus, until all commercial stations begin DTV operations, the Commission should require Class A stations to protect the maximum facilities of full service NTSC stations.

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[52] *CBPA NPRM* ¶ 46.

Conclusion

Sinclair respectfully requests that the Commission act consistently with the views expressed herein.

Respectfully submitted,

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Dated: February 10, 2000

CERTIFICATE OF SERVICE

I, Renee Williams, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 10th day of February 2000, served a true copy of the foregoing **"COMMENTS"** by hand delivery upon the following

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