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

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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

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COMMENTS

Council Tree Communications, L.L.C. ("Council Tree"), by its attorneys, hereby submits these comments in the above-referenced proceeding. The FCC has sought comment on its proposals for implementation of the Community Broadcasters Protection Act of 1999 ("CBPA").[1] In the *Notice*, the Commission proposes policies for licensing entities in the newly created Class A television service. Although the *Notice* raises a range of issues related to this new classification for existing low power television ("LPTV") licensees, Council Tree limits these comments to the issues addressed below.

Council Tree is a Colorado-based company which, among other things, develops investments that are controlled by minority interests, specifically Arctic Slope Regional Corporation, an Alaska Native Corporation owned by 7500 Native American shareholders. Current investments include pending transfers before the FCC of several broadcast stations, including LPTV and television translator stations.[2] Council Tree's affiliates intend to use these stations to provide local oriented

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1 *Establishment of a Class A Television Service*, MM Docket No. 00-10, *Order and Notice of Proposed Rulemaking* (Jan. 13, 2000). ("*Notice*").

2 Council Tree affiliates have pending before the Commission applications for assignment of construction permits and licenses for AM, FM, television and LPTV stations.

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programming and programming directed at Spanish-speaking audiences in several markets. Currently, these markets have very limited options for such programming. Because a Council Tree affiliate intends to acquire the assets of an LPTV station eligible for Class A status under the CBPA, Council Tree has a direct interest in the outcome of this proceeding.

In the *Notice*, the Commission seeks comment on whether it should grant Class A status based on applications submitted after the time period specified in the CBPA.[3] Based on the wording of the statute and to advance Congress' goals embodied in the CBPA, Council Tree believes the Commission should allow LPTV licensees to qualify for Class A status on an ongoing basis.

The CBPA explicitly envisions multiple means of qualifying for conversion to Class A status. As the *Notice* points out, under Section (f)(1)(B), LPTV licensees may qualify for Class A designation by filing a certification of eligibility within 60 days after the date of enactment of the CBPA.[4] Section (f)(1)(C) authorizes the Commission to award Class A designation to an LPTV licensee that submits an application for conversion within thirty days after the FCC adopts final regulations even if the LPTV licensee failed to file a certification of eligibility under (f)(1)(B).[5] Finally, Section (f)(2)(B) grants the Commission broad discretion to treat any station as qualifying for Class A status if the Commission determines such designation would advance the public interest.[6]

Council Tree believes Congress adopted multiple methods for Class A qualification in order to encourage the Commission to take an expansive view of Class A eligibility. Thus, Council Tree submits it would be appropriate for the Commission to authorize LPTV stations to qualify for

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3 *Notice* at 5.

4 *Id.* at 4.

5 113 Stat. 1501, 1501A-595 and 596 (1999).

6 *Notice* at 5.

Class A designation on either an ongoing basis or during a defined later period (*e.g.*, one year after final regulations are adopted). This approach would be consistent with Congress' intent as articulated in the CBPA. The statute itself notes Congress' finding that LPTV stations offer important public benefits by providing community programming that would not otherwise be available.[7] Congress adopted the CBPA to protect and promote the viability of these community broadcasting outlets.

It would run counter to Congress' purposes for the Commission to restrict Class A eligibility to those stations providing the required level of community broadcasting by a date in the past. Instead, the Commission should adopt an eligibility test that encourages additional LPTV stations to develop and focus on community programming. Currently ineligible stations should be able to qualify for Class A status by offering the required level of community programming at some ascertainable period in the future. Moreover, future LPTV stations should be eligible for Class A status to the extent they offer the required level of community programming within a prescribed period. Expanding opportunities for Class A status will encourage additional LPTV stations to focus on programming relevant to their local communities.

Council Tree also encourages the Commission to take an expansive view of the type of programming which can be used to demonstrate eligibility for Class A status. Because Congress intended the Class A service to promote local oriented programming, it included this element as an eligibility requirement for Class A status. However, local programming is specific to each community, and to the audience served. It is difficult to develop a national standard defining what constitutes local programming. Therefore, Council Tree submits that LPTV stations should be able to demonstrate eligibility for Class A status based on a showing that they are providing programming

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[7] 113 Stat. at 1501A-594.

which is unique and meaningful for the local audience without regard for the physical location of production of the programming. Often locally-oriented programming can be produced better and cheaper (and therefore may be more available) from a non-local source. For example, foreign language programming on news, health or safety issues may be vitally important and otherwise unavailable to large segments of the population in many local communities. The fact that the programming is produced outside the market does not reduce the value of that programming to the community. It is also very difficult in this area of digital networking, to define what a "local area" (even using the DMA definition) would be. An adjacent DMA may be more relevant for a particular LPTV audience.

Council Tree appreciates this opportunity to express its views on the appropriate policies governing eligibility for the Class A service. Council Tree looks forward to working with the Commission to foster the continued viability of these important sources of community information.

Respectfully submitted,

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