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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Establishment of a Class A ) MM Docket No. 00-10  
Television Service ) MM Docket No. 99-292  
 ) RM 9260  
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To: The Commission

**COMMENTS OF CORDILLERA COMMUNICATIONS, INC.**

Cordillera Communications, Inc. ("Cordillera"), by its attorneys, submits herewith its comments in response to the Commission's Notice of Proposed Rule Making<sup>1</sup> to implement the Community Broadcasters Protection Act of 1999<sup>2</sup> and prescribe regulations establishing a class A television service for qualifying low power television ("LPTV") stations. Through wholly-owned subsidiaries, Cordillera owns a number of full power and low power television stations<sup>3</sup> and thus has an important interest in the outcome of this proceeding. Essentially, Congress passed the CBPA to protect viewers' ability to receive existing or planned television service. Cordillera fully supports that objective.

In the *Notice*, the Commission invites comment on a number of issues where Congress' directions to the Commission seemingly are less than explicit. Because of Cordillera's

<sup>1</sup> Establishment of a Class A Television Service, *Notice of Proposed Rule Making*, MM Docket Nos. 00-10, 99-292, FCC 00-16 (rel. Jan. 13, 2000) ("*Notice*").

<sup>2</sup> Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I (*codified at* 47 U.S.C. § 336(f)) ("*CBPA*").

<sup>3</sup> Stations are listed in Appendix A.

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ownership of both full power and low power television stations, it believes that its comments herein offer a reasonable and balanced response and urges the Commission to consider them accordingly.

**I. THE COMMISSION SHOULD PERMIT LPTV STATIONS CURRENTLY OPERATING ABOVE CHANNEL 51 TO QUALIFY FOR CLASS A STATUS.**

Congress passed the CBPA to protect the future of existing LPTV stations that provide valuable programming to their communities.<sup>4</sup> The CBPA gives primary status to the existing facilities of eligible LPTV stations operating in the core spectrum and, effectively, those non-core LPTV stations that can find an available channel inside the core. Although Congress prohibited the Commission from granting “a class A *license* to a low-power television station for operation between [channels 52-69],”<sup>5</sup> it plainly contemplated that some low power stations would be “temporarily operating in that bandwidth” and that the Commission “shall provide to [such] low-power television stations . . . the opportunity to meet the qualification requirements for a class A license.”<sup>6</sup> Accordingly, consistent with Congress’ intention, the Commission must promulgate regulations that protect the future of *all* LPTV stations that otherwise qualify for class A status and not just those qualifying stations that fortuitously operate on a core channel.

The Commission states that it is inclined to protect LPTV stations on channels above 51 only when an eligible station is assigned a channel within the core.<sup>7</sup> Such a policy, however, is contrary to Congress’ directive to provide non-core LPTV stations the opportunity to gain class

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<sup>4</sup> Section-by-Section Analysis to S. 1948, known as the “Intellectual Property and Communications Omnibus Reform Act of 1999,” as printed in 145 CONG. REC. S14708, S14725 (daily ed. Nov. 17, 1999) (“Section-by-Section Analysis”).

<sup>5</sup> 47 U.S.C. § 336(f)(6)(A) (emphasis added).

<sup>6</sup> *Id.*

<sup>7</sup> *Notice* at ¶24.

A status. The Commission says it is concerned that protecting a non-core LPTV station before it is assigned an in-core channel would be inconsistent with the CBPA's prohibition on awarding class A "status" to non-core stations.<sup>8</sup> This overstates what Congress said. Congress directs the Commission not to grant a "class A license" to non-core LPTV stations.<sup>9</sup> Congress does not prohibit the Commission from granting, as the *Notice* says, "class A status" to non-core stations.

The Commission can and should protect non-core LPTV stations within the guidance of the CBPA by granting such stations temporary class A status until they can relocate to the core. Such status would give no primary protection to qualifying non-core LPTV stations with respect to the facilities described in section 336(f)(7)(A) but would prevent any further encroachments on their existing service areas.<sup>10</sup> Relocation to the core likely would pose no problems once the DTV transition is complete because full-power stations will return one of their allotments, making available significant amounts of spectrum. Once the LPTV station has an opportunity to relocate to the core, the Commission shall, as the CBPA directs, "issue a class A license simultaneously with the assignment of [a core] channel."<sup>11</sup> In this manner, the Commission would "provide . . . the opportunity to meet [class A] qualification requirements"<sup>12</sup> and still "buttress the commercial viability of those LPTV stations . . . [that] provide valuable programming to their communities."<sup>13</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> 47 U.S.C. § 336(f)(6)(A).

<sup>10</sup> 47 U.S.C. § 336(f)(7)(A).

<sup>11</sup> 47 U.S.C. § 336(f)(6)(A).

<sup>12</sup> *Id.*

<sup>13</sup> Section-by-Section Analysis at S14725.

**II. THE COMMISSION SHOULD OUTLINE CLEARLY THAT ELIGIBLE NON-CORE LPTV STATIONS WOULD HAVE PRIORITY IN RELOCATING TO THE CORE.**

Non-core LPTV stations should have some priority in relocating to the core. Many stations, as is the case with certain of Cordillera's, already have been displaced to a non-core channel by the primary service of newly implemented digital television stations. These stations will now have to move to a new channel in the core to qualify for a class A license. Inasmuch as Congress plainly intended "to buttress the commercial viability" of those LPTV stations that provide valuable programming to their communities,<sup>14</sup> the Commission should adopt clear procedures that grant priority to non-core LPTV stations relocating to the core.

Non-core LPTV stations otherwise eligible for class A status face a similar dilemma as those full power stations with both analog and digital channels outside of the core. At the end of the DTV transition, such full power stations must identify available spectrum inside the core for their future single-channel operations. This task will be simpler once full power broadcasters have returned one of their channels and spectrum becomes available.

Whatever procedures the Commission ultimately adopts for migrating non-core full power broadcasters to the core, the Commission should adopt similar measures for those non-core LPTV stations otherwise eligible for class A status. The CBPA makes plain that the service areas of existing full power stations are to be protected from class A stations.<sup>15</sup> Accordingly, full power stations migrating to the core should have priority over LPTV stations that must relocate. However, *only* full power licensees should be preferred over eligible non-core LPTV stations that must relocate to the core. Eligible non-core LPTV stations would have priority over others.

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<sup>14</sup> *Id.*

<sup>15</sup> 47 U.S.C. § 336(f)(7)(A).

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<sup>14</sup> *Id.*

<sup>15</sup> 47 U.S.C. § 336(f)(7)(A).

By adopting similar measures for both non-core full power and LPTV stations, the Commission's administrative burden would be minimized.

Additionally, Cordillera urges the Commission to give non-core LPTV stations the opportunity to file for a class A license at the same point in-core LPTV stations file – even if a station cannot identify an available core channel. In this manner, non-core LPTV stations would not be prejudiced by the first-in-time protection Congress authorized in section 336(f)(7)(B) and the potential harm to non-core LPTV stations would not be compounded.<sup>16</sup> This will protect the commercial viability of all eligible LPTV stations as Congress intended and not just those fortunate to be operating already in the core.

### **III. THE COMMISSION SHOULD PROTECT FULL POWER STATIONS' RIGHT TO SWITCH TO THEIR TRADITIONAL ANALOG CHANNEL AFTER THE COMPLETION OF THE DTV TRANSITION.**

As the Commission recognizes, the CBPA does not address explicitly the extent to which full power broadcasters will be able to protect their DTV contour if they revert to their traditional analog channel after the close of the DTV transition period.<sup>17</sup> However, the CBPA generally protects full power stations' existing Grade B contours and allotted DTV contours.<sup>18</sup> Accordingly, statutory construction requires the Commission to prohibit class A stations from causing interference to full power stations that revert to their traditional channel – even if those facilities are maximized.

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<sup>16</sup> 47 U.S.C. § 336(f)(7)(B).

<sup>17</sup> *Notice* at ¶34.

<sup>18</sup> 47 U.S.C. § 336(f)(7)(A).

**A. The CBPA Permits the Right of Full Power Stations to Revert to Their Analog Channel.**

The Commission has yet to adopt guidelines for full power stations to elect their permanent channel at the close of the DTV transition, but Congress contemplated such an election would be permitted where possible.<sup>19</sup> Tenets of statutory construction thus require the Commission to assume that Congress was aware of this policy when it passed the CBPA.<sup>20</sup> Moreover, Congress plainly intended to protect both the analog service areas of existing full power stations and the corresponding replicated DTV service areas.<sup>21</sup> Accordingly, the Commission is compelled to protect the service area of a full power station that reverts to its traditional channel after the DTV transition period's close. Only in this manner would Congress' concern about replication be given effect.

Not only is the Commission required to adopt this construction, it is the one that makes the most sense. Congress surely did not develop the elaborate structure in the CBPA to protect full power stations' ability to replicate their analog service only to have that protection compromised if a station reverts to its traditional channel. It would be inconsistent with the CBPA to preclude a full power station from reverting to its analog channel and prevent affected viewers from continuing to receive the station's service.

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<sup>19</sup> “[T]he Commission shall . . . require that either the additional [DTV] license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment.” 47 U.S.C. § 336(c).

<sup>20</sup> See *Goodyear Atomic Corp v. Miller*, 486 US 174, 184 (1988) (Congress is presumed to know the existing law pertinent to the legislation it enacts). See also *Fogerty v. Fantasy, Inc.*, 510 US 517, 114 S.Ct. 1023, 1030 (1994), citing *Lorillard v. Pons*, 434 US 575, 580 (1978) (Congress is presumed to be aware of an administrative or judicial interpretation of a statute).

<sup>21</sup> 47 U.S.C. § 336(f)(7)(A).

**B. The CBPA Permits Reverted Stations to Maximize Facilities.**

Congress intended that stations reverting to their analog channel after the close of the DTV transition also would be able to maximize facilities. This is demonstrated by the CBPA's lack of distinction between protecting a station's maximized facilities on either its analog or digital channel. Congress makes this plain by using the term "digital" in the other three clauses of section 336(f)(7)(A)(ii) but omitting it from the clause regarding maximization. If Congress had intended only to protect the maximization opportunities for the digital channel operation, it would have included the term "digital" in clause IV and silenced any questions.

Such statutory construction is consistent with Congressional directives to preserve full power stations' opportunity to maximize. In section 336(f)(1)(D), Congress established detailed procedures to permit DTV stations to maximize facilities.<sup>22</sup> It would not be reasonable for Congress to allow for a "temporary maximization" for a full power station and then terminate it if the station ultimately reverts to its former analog channel. If Congress had intended the absurd result of a "temporary maximization," it would have included such a provision in the statute.

The Commission suggests in the *Notice* that stations would need to take additional steps to preserve their right to replicate their maximized DTV service area on the analog channel.<sup>23</sup> This is not necessarily the case. The CBPA states that the Commission may not grant a class A license if the station would cause interference to maximized facilities.<sup>24</sup> If, after a full power station reverts to its traditional channel, a class A station causes interference to the full power

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<sup>22</sup> 47 U.S.C. § 336(f)(1)(D). Note that Congress rightly presumes that analog stations already are "maximized," as that term would be applied to analog operations and thus does not grant a similar opportunity to *analog operations*. This is to be contrasted to *digital operations* on the former analog channel.

<sup>23</sup> *Notice* at ¶34.

<sup>24</sup> 47 U.S.C. § 336(f)(7)(A)(ii)(IV).

station's maximized contour, then the class A station must be subordinated to the extent necessary. Maximizing full power stations did not and do not have to account for low power stations. Section 336(f)(7)(A)(ii)(IV) makes that plain.

Full power stations should not have to take any additional action to preserve maximization rights for their analog channels. The CBPA does not require that any additional action be taken. As discussed above, section 336(f)(7)(A)(ii)(IV) does not restrict a station's maximization protection to the digital channel.<sup>25</sup> Moreover, analog stations effectively have satisfied the notice requirements referenced in section 336(f)(7)(A)(ii)(IV) and specified in section 336(f)(1)(D) because their facilities already are "maximized," as that term would be applied in these circumstances.<sup>26</sup> When a station reverts to its traditional channel, however, the authorized station at that point in time may not reflect maximized facilities. A station that properly had submitted a maximization notice would be deprived of the benefit it acted to protect. By preserving the maximization opportunities for reverting stations – as the CBPA permits – the Commission would ensure that viewers would not lose their over-the-air television service.

### **Conclusion**

Congress has acted to protect those LPTV stations that provide valuable programming to their communities. In this proceeding, the Commission accordingly must implement Congress' wishes. In the important matters discussed herein, Congress has provided ample guidance for the Commission. Non-core LPTV stations must have a meaningful opportunity to obtain class A

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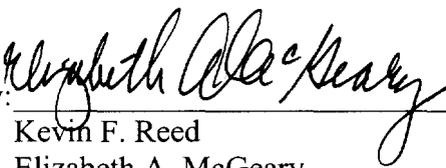
<sup>25</sup> *Id.*

<sup>26</sup> *I.e.*, it must be assumed that analog stations already have expanded their service areas to the extent the Commission's rules permit.

status. Clear procedures should be adopted for migrating non-core LPTV stations to the core, and the Commission must protect the full ability of full power stations to continue broadcasting on their traditional channels after the DTV transition. Such policies are permitted by the CBPA and would ensure that viewers continue to receive broadcast service.

Respectfully submitted,

**CORDILLERA COMMUNICATIONS, INC.**

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**APPENDIX A**  
**Stations Owned by Cordillera Communications, Inc.**

Cordillera Communications, Inc. is the direct corporate parent of the following broadcast station licensees:

KATC Communications, Inc., licensee of KATC(TV), Lafayette, Louisiana

KPAX Communications, Inc., licensee of KPAX-TV, Missoula, Montana;  
K18AJ, Kalispell, Montana

KXLF Communications, Inc., licensee of KXLF-TV, Butte, Montana; K25EJ,  
Helena, Montana; and K26DE, Bozeman, Montana

KRTV Communications, Inc., licensee of KRTV(TV), Great Falls, Montana;  
K45CS, Lewiston, Montana; and K48AI, Joplin, Montana

KCTZ Communications, Inc., licensee of KCTZ(TV), Bozeman, Montana;  
K20DY, Belgrade, Montana; and K43DU, Butte, Montana

KTVQ Communications, Inc., licensee of KTVQ(TV), Billings, Montana;  
K07HC, Sheridan, Wyoming; K10GF, Miles City, Montana; K18EF, Hardin,  
Montana; K55AJ, Heath, Montana; K64EM, Castle Rock, Montana; K69CM, Big  
Timber, Montana; and permittee of KBJL(TV), Sheridan, Wyoming

KVOA Communications, Inc., licensee of KVOA(TV), Tucson, Arizona, K64BV,  
Casas Adobes, Arizona (and under a construction permit as K62DT); KRIS-TV,  
Corpus Christi, Texas; K20EK, Kingsville, Texas; K30EG, Beeville, Texas;  
K38EB, Kingsville, Texas; K47DF, Corpus Christi, Texas; K49DV, Beeville,  
Texas; K68DJ, Corpus Christi, Texas; and permittee of K20FO, Sierra Vista,  
Arizona

Sawtooth Communications, Inc., licensee of KIVI(TV), Nampa, Idaho; K27DX,  
McCall, Idaho; and KSAW-LP, Twin Falls, Idaho

Sangre de Cristo Communications, Inc., licensee of KOAA-TV, Pueblo,  
Colorado; K30AA, Colorado Springs, Colorado; and permittee of K15EC,  
Westcliffe, Colorado; K17DP, Salida, Colorado; K18EJ, Lamar, Colorado; and  
K19DY, Canon City, Colorado

WLEX Communications, LLC, licensee of WLEX(TV), Lexington, Kentucky