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FEB 10 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

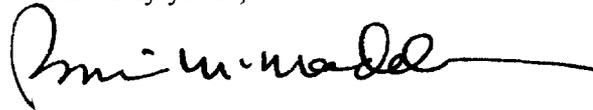
Re: MM DOCKET NO. 00-10  
MM DOCKET NO. 99-292  
RM-9620

Dear Ms. Salas:

On behalf of Sarkes Tarzian, Inc., there are transmitted herewith an original and 8 copies of the *Comments of Sarkes Tarzian, Inc.* in the above-referenced rule making proceeding.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Sincerely yours,



Brian M. Madden

BMM/tlm  
Enclosure

OK

# Federal Communications Commission

WASHINGTON, D.C. 20554

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

To: The Commission

### COMMENTS OF SARKES TARZIAN, INC.

Sarkes Tarzian, Inc. (“STI”), by its attorneys and pursuant to Section 1.415 of the Commission’s rules, hereby submits these comments in response to the above-captioned *Order and Notice of Proposed Rule Making (“NPRM”)*, issued by the Commission on January 13, 2000.

For the reasons set forth in these comments, STI urges that the Commission proceed with the utmost caution in adopting rules to implement the Community Broadcasters Protection Act of 1999, 47 U.S.C. § 336(f) (“CBPA”), to enable television licensees to continue their plans for the implementation of, and transition to, digital television broadcasting as previously ordered by the Commission. Such development is fully consistent with the objectives of the CBPA, as adopted by Congress, which has properly left the implementation of this new federal law to the expertise and experience of the Commission. The Commission, with the full knowledge, consent and concurrence of Congress, has made the transition of television service from analog to digital a high priority for many years. In order to accomplish this dramatic conversion, the Commission must narrowly construe the CBPA when necessary to give

precedence to the development of digital television by full service television licensees.

STI is the licensee of full service television Station WRCB-TV, NTSC Channel 3, Chattanooga, Tennessee; full service television Station KTVN(TV), NTSC Channel 2, Reno, Nevada; and of television translator stations rebroadcasting the signal of Station KTVN(TV). In the DTV Table of Allotments, Station WRCB-TV was paired with digital channel 55, which is not ultimately to be included in the core of digital television spectrum after the transition to DTV is complete. For this reason, on January 14, 1999, STI filed a *Petition for Rule Making* (RM-9691) seeking substitution of Channel 13 as the DTV allotment for Station WRCB-TV, thereby eliminating the necessity that STI's station ultimately relocate from its initial DTV operation to a different, permanent DTV channel. The Commission issued a *Notice of Proposed Rule Making* (MM Docket No. 99-268) on August 13, 1999, proposing to accept STI's requested change in the DTV Table of Allotments. That proceeding remains pending.

STI also filed a request to change the DTV channel assigned for use by Station KTVN(TV). On January 7, 1999, STI submitted a *Petition for Rule Making* (RM-9665) seeking the substitution of Channel 13 for the DTV allotment for Station KTVN(TV) in lieu of assigned DTV Channel 32. That request was proposed for adoption in a *Notice of Proposed Rule Making* issued by the FCC on September 24, 1999 (MM Docket No. 99-291), but also remains pending. STI has also requested and obtained a grant of a construction permit to relocate the DTV facilities of Station KTVN-DT to a site other than that of its NTSC operation (FCC File No. BPCDT-980522KF, granted June 11, 1999).

As a consequence of these actions, when STI filed notification of its intention to maximize the digital television facilities for each of its television stations, maximization

protection for digital operation was requested on its current DTV channel assignment, its requested DTV channel allotment and on its present NTSC channel.<sup>1</sup> STI has devoted substantial time, energy and resources toward the institution of DTV service, and knows from its experience that full implementation of digital operation will require considerable technical flexibility for licensees. The Commission must, consistent with its responsibilities under the CBPA, construe that statute as narrowly as possible to preserve that flexibility so as to best facilitate the orderly achievement of full digital television service.

STI believes that the Commission has tentatively proposed to give the CBPA too broad a reading in developing rules applicable to the protection rights of qualifying Class A LPTV stations. At paragraph 13 of the *NPRM*, the Commission concludes that it will protect Class A LPTV stations from interference from DTV stations authorized after the date the CBPA was signed into law, recognizing only three specific exceptions: when DTV stations seek to replicate their NTSC service areas; when DTV stations which filed maximization notifications *and* a maximization application by May 1, 2000; and when technical problems encountered by full-service licensees “necessitate” changes in the station’s DTV parameters, including channel changes. Other proposals for changes in DTV parameters filed by full service stations, even if pending at the time of the enactment of the CBPA, would be required to protect the contours of newly designated Class A LPTV stations. STI submits that this restrictive construction does not

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<sup>1</sup> STI is also a party to a joint filing of comments in this proceeding on behalf of a group of television station licensees which operate on NTSC Channels 2-6 and which were assigned DTV channels outside of the ultimate spectrum core (the “*Channel 2-6 Licensees*”). Those joint comments seek to preserve the right of each station to revert to its current NTSC channel assignment for DTV operation at the end of the transition phase or to obtain a different DTV channel, operating with maximum facilities, even though the precise parameters of the ultimate DTV operation cannot be determined at this time.

best resolve in the public interest the clear tension between the competing interests of Class A eligible LPTV operators and full service television licensees. This is especially so for licensees such as STI which have worked diligently to formulate suitable plans for their DTV transition, but which have been delayed awaiting Commission action on channel change requests and other, similar matters, all of which are a matter of record in the Commission's engineering database. Although both of the STI rule making requests for changes were filed more than a year ago, neither -- nor any other request filed by *any* full service licensee -- has yet been acted upon.<sup>2</sup> Because no decision has been reached in these proceedings, STI and many other full service licensees face the prospect that acceptable proposals may now be thwarted by the existence of Class A eligible LPTV stations. At the very least, STI urges the Commission to protect the proposals of full service stations to modify their DTV facilities, including requests for new DTV channel assignments, which were on file prior to the date that the CBPA became law.<sup>3</sup>

Furthermore, the Commission should construe the CBPA to give precedence to maximization notifications filed by full service licensees which specified an intention to maximize DTV facilities even if, because of uncertainty over the ultimate channel to be selected

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<sup>2</sup> STI notes that the DTV channel change request filed for Station WRCB-TV has been opposed by Media General Broadcasting, Inc. However, the latest pleading in that proceeding was filed last October and a resolution is overdue. STI received a deferral of the date on which it is required to file an application for DTV service for Station WRCB-TV until May 1, 2000 in light of the pendency of the rule making proceeding. It now seems unlikely that there will be any action on the rule making request within that extended timeframe, given this proceeding. Although no objection was submitted with respect to the DTV channel change requested for Station KTVN(TV), no decision has been reached in that case either.

<sup>3</sup> The CBPA provides protection against interference that would be caused by Class A LPTV stations to other LPTV stations and television translator stations for which pending applications were on file prior to the enactment of the statute. 47 U.S.C. § 336 (f)(2)(B)(iii). It makes no sense to accord protection to pending applications of passive repeaters of full service stations but no protection to pending proposals of the full service stations themselves.

for DTV operation, those notices specified more than a single channel for potential DTV service, and where an application specifying operating parameters on each such channel cannot be filed by May 1, 2000.<sup>4</sup> The flexibility afforded to full service stations by this application of the statute will be necessary to achieve complete transition to digital television service. STI agrees with the Commission that replication or maximization requests submitted by full service stations should be protected from interference from Class A LPTV regardless of the existence of “technical problems.” *NPRM* at para. 33. This principle must apply in all aspects of the relative rights between the operation of Class A LPTV stations and the ultimate DTV operation of full service stations without consideration of when an application for replication or maximization is filed or granted. Any more restrictive limitations on the rights of full service licensees will inevitably result in greater financial and technological impediments to the ability of full service stations to accomplish the digital conversion.

Over the past decade, the Commission has proceeded cautiously to craft a framework for the transition to digital television which strikes a delicate balance among the conflicting interests of different classes of television stations. After substantial effort and expense on the part of the Commission and full service television licensees to develop and to comply with these requirements, the Commission has now been required to integrate the broad

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<sup>4</sup> Because of the unresolved rule making proceedings, STI cannot file DTV applications for its stations on the desired DTV channel by May 1, 2000 without action by the Commission on the pending requests; and it is not clear at this time whether DTV operation on low band VHF channels will be feasible. As a result, no application on these frequencies can be filed by the deadline imposed in the CBPA. As noted in the joint comments of the Channels 2-6 Licensees, the Commission should make it clear that no Class A LPTV station will be authorized on Channels 2-6 at least until *all* full service NTSC licensees operating on those channels have been able to make an election as to the permanent DTV channel at the end of the transition.

policy objectives of the CBPA into the established scheme. STI urges the Commission to fulfill its mandate under the statute in an equally cautious manner, carefully construing the CBPA to preserve the announced DTV conversion proposals of full service television licensees within the overall public interest objectives of the statute. STI believes that the protection of the rights of full service television stations as proposed in these comments will best accommodate the competing interests involved, while enabling the Commission to both maintain the established conversion to digital television and implement the CBPA, thereby advancing the public's interest in receiving technologically advanced television programming from diverse local sources.

Respectfully submitted,

**SARKES TARZIAN, INC.**

By 

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February 10, 2000