ORIGINAL

BEFORE THE DOCKET FILE COPY ORIGINAL

Federal Communications Commission

WASHINGTON, D.C.

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

RECEIVED FEB 10 2000 FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

COMMENTS OF
H&R PRODCUTION GROUP, LLC

H&R Production Group, LLC (H&R"), by its counsel, hereby respectfully submits its comments to the Commission's Order and Notice of Proposed Rule Making (released January 13, 2000) ("NPRM") regarding the implementation of the Community Broadcasters Protection Act of 1999[1] (the "CBPA"), which requires the Commission to prescribe regulations for Class A television service. As the proposed assignee of a low-power television ("LPTV") station seeking Class A status and operating outside the core band, H&R is filing these comments to address the Commission's proposals relating to these issues.

H&R is the proposed assignee of LPTV station W57CX, West Palm Beach, Florida.[2] H&R currently is programming the station pursuant to a Time Brokerage Agreement pending Commission approval and subsequent consummation of the proposed assignment. On January

---

[1] The Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat 1501 (1999) *codified at* 47 U.S.C. § 336(f).

[2] On December 6, 1999, H&R Production Group, LLC filed an application to acquire W57CX, West Palm Beach, Florida from Richard and Ann Vermillion. See FCC File No. BAPTTL-19991206AJC.

0+8

28, 2000, Richard and Ann Vermillion (the "Vermillions"), the permittees and proposed assignor of W57CX, filed a Statement of Eligibility for Certification of Class A Status on behalf of W57CX. As H&R is the proposed assignee of W57CX, future regulations for Class A licensees are of importance to H&R. While H&R generally agrees with the Commission's proposal, it urges the Commission to adopt regulations that (1) allow for an LPTV station serving the public and in substantial compliance with the qualification criteria to be granted Class A status; and (2) allow for an LPTV station operating on channels 52-59 to seek immediate displacement relief.

I. An LPTV Station Serving the Public and In Substantial Compliance With the Eligibility Criteria Should Be Eligible for Class A Status

The underlying purpose of the CBPA is to protect existing LPTV stations providing a valuable local over-the-air service from displacement by digital television ("DTV") facilities.[3] In an effort to determine which LPTV stations are deserving of protection from such displacement, Congress created certain "qualification" requirements.[4] To qualify, a LPTV must demonstrate that:

> (A)(i) during the 90 days preceding the date of enactment of the Community Broadcasters Protection Act of 1999
>
> (I) such station broadcast a minimum of 18 hours per day;
>
> (II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such 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; and

---

[3] H.R. Rep. No. 464, 106th Cong., 1st Sess. (1999).

[4] 47 U.S.C. § 336(f)(2).

(III) such station was in compliance with the Commission's requirements applicable to low-power television stations; and

(ii) 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...[5]

The Commission also has the discretion to grant Class A status where the "public interest, convenience, and necessity would be served."[6] The Commission seeks comment on how to interpret this public interest provision. H&R recognizes that a broad interpretation of such provision could result in an increased number of Class A facilities, especially as the Commission has received over 1500 certifications of eligibility for Class A status,[7] and ultimately undermine the purpose of the CBPA. However, where an LPTV station provides a valuable local over-the-air service and substantially complies with the criteria enumerated in (A)(i), a grant of Class A status would be in the public interest. Such is the case with W57CX.

Since 1988, the Vermillions have encountered numerous obstacles introducing a new LPTV service to the West Palm Beach community. Only recently, as of November 9, 1999, were the Vermillions able to complete construction and commence operation of the station. However, as W57CX was not operational the requisite 90 days preceding the enactment of the CBPA (November 29, 1999), it could not comply with the criteria specified in (A)(i). Although since W57CX went on the air, it has met the eligibility requirements by operating a minimum of 18 hours per day, complying with the LPTV rules and averaging 3 hours per week of locally-produced programming, providing a meritorious service to the residents of West Palm Beach. As

---

[5] 47 U.S.C. §336(f)(2)(A).

[6] 47 U.S.C. § 336(f)(2)(B).

[7] See Public Notice, No. 97659 (released February 8, 2000).

such, W57CX should not be precluded from eligibility of Class A status.

II. The Commission Should Allow LPTV Stations Eligible for Class A Status and Operating Outside of the Core Band an Immediate Opportunity to Seek Displacement Relief

H&R recognizes that the CBPA precludes the Commission from *granting* a Class A license to an eligible station operating outside of the core band (i.e. channels 2-51).[8] However, as specified in the CBPA, such stations are not to be precluded from demonstrating their *eligibility* for Class A status.[9] In fact, the CBPA directs the Commission to grant a Class A license to an eligible LPTV facility upon assignment of a channel within the core spectrum.[10] Under the Commission's rules, an LPTV station operating on channels 52-59 cannot seek displacement relief unless such station demonstrates actual or potential interference from a DTV facility.[11] Thus, eligible Class A stations operating on these channels and not able to demonstrate such interference are precluded from requesting an immediate replacement channel. The Commission seeks comment as to whether it should allow these stations to seek immediate channel displacement relief.[12] H&R urges the Commission to adopt this proposal.

W57CX has filed the requisite certification of eligibility for Class A status. However, pursuant to the Commission's rules, it cannot seek displacement relief because it is unable to demonstrate actual or potential interference from any DTV facility. With the transition to DTV

---

[8] 47 U.S.C. § 336(f)

[9] Id.

[10] Id.

[11] See 73.3572(a)(2).

[12] NPRM at ¶ 49.

barely underway, it could be months or years before W57CX is able to make the requisite interference showing to seek displacement relief. Forcing an eligible Class A facility to wait to such relief ultimately may preclude the station from securing a replacement channel in the market. With the influx of DTV signals into an already crowded West Palm market, availability of channels is scarce. Preclusion from filing an immediate displacement application will only result in the increased difficulty, if not impossibility, in securing a replacement channel.

CONCLUSION

For the reasons stated above, H&R urges the Commission to adopt regulations for Class A service consistent with the revision set forth herein.

Respectfully submitted,

H&R PRODUCTION GROUP, LLC

By: Lara S. Meisner
Lara Strayer Meisner

Its Attorney

FISHER WAYLAND COOPER
LEADER & ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006-1851
(202) 659-3494

Dated: February 10, 2000