

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In the Matter of**  
  
**Establishment of a Class A  
Television Service**

**MM Docket No. 00-10**  
**MM Docket No. 99-292**  
**RM-9260**

**Comments of the  
Association of Local Television Stations, Inc.**

The Association of Local Television Stations (ALTV) files the following comments in the above captioned proceeding. Our members have a unique interest in the creation of the new Class A low power television service. The improper implementation of the Community Broadcasters Protection Act (CPBA) can have a dramatic, adverse impact on the roll out of full service digital television.<sup>1</sup> This is especially important for UHF facilities seeking to maximize power in the digital world.<sup>2</sup> We would urge the FCC to reject any policies that could potentially have such an effect.

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<sup>1</sup>Community Broadcasters protection Act of 1999, Section 5008 of Pub.L. No. 106-113, 113 Stat. 1501 (1999), codified 47 U.S.C. § 336(f).

<sup>2</sup>As the FCC knows, the DTV Table of Allotments contains some significant power disparities for some UHF stations. While the Commission helped rectify some of the problem by increasing minim power and permitting tilt beam antennas, maximizing power is vitally important to the competitive survival of these UHF stations.

## **I. Congress Sought to Protect the Deployment of Digital Television.**

While the CPBA sought to provide some certainty for those low power stations that met the eligibility requirements for Class A status, Congress was well aware of the need to protect the roll out of digital television.

The conferees therefore seek to provide some regulatory certainty for low-power television service. The conferees recognize that, because of 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 a guarantee in light of the fact that many existing LPTV stations provide little or no original programming service.

Instead the conferees seek to buttress the commercial viability of those LPTV stations which can demonstrate that they provide valuable programming to their communities.... Consequently these stations should be afforded *roughly similar* regulatory status. Section 5009, the Community Broadcasters Protection Act of 1999, will achieve that objective, and at the same time *protect the transition to digital. (Emphasis supplied)*<sup>3</sup>

Accordingly, the legislative history of the CPBA makes it clear that the protections afforded to Class A LPTV stations should not interfere with the transition to digital by full service television stations. Significantly, the regulatory status given to the new Class A LPTV stations is roughly similar, but not equal, to their full service brethren. With these policy considerations in mind we turn to the specific issues raised by the FCC.

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<sup>3</sup>Joint Explanatory Statement of the Committee of Conference, *Intellectual Property and Communication Omnibus Reform Act of 1999*, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999) at 62. (Hereinafter *Joint Explanatory Statement*)

## II. Congress Envisioned A One Time Certification Process.

The FCC asks whether the statute authorizes the Commission to accept applications to convert to Class A status in the future. We do not believe the statute permits an on-going Class A conversion process. We believe the statute established a single opportunity for existing LPTV stations to convert to Class A status.

The conversion process to Class A status is quite explicit in the statute. Section f(1)B requires the FCC to notify all LPTV stations describing the requirements for acquiring Class A status within 30 days of enactment. Within *60 days* of enactment (or 30 days after the FCC's notice), LPTV stations seeking Class A designation *must submit a certification* of eligibility to the FCC. A timely filed certification of eligibility is a condition precedent to obtaining Class A status. This condition can be met only within the window set forth in the statute. Section f(1)(B) states categorically, "***Within 60 days*** after such date of enactment licensees intending to seek Class A designation ***shall*** submit to the Commission a certification of eligibility based on the qualification requirements of this subsection."

The next step in the process is the submission of an application for Class A status. Of course no LPTV licensee is "required" to file for Class A status. Rather, stations that have submitted the mandatory certification, *may* file an application. The term "may" used in Section f(1)(C) can only be properly construed to apply to those stations that have already met the condition precedent and filed a certification of eligibility with the FCC under f(1)(B).

There is nothing in the statutory language or legislative history of Section f (1)(C) which would permit LPTV stations to circumvent the certification for eligibility process established in Section f (1)B. When the two statutory provisions are read together, the term “may” in Section (f)(1)(c) merely explains that LPTV stations that have filed a certification of eligibility have the option of filing a application for Class A status within 30 days after the FCC’s regulations are enacted. Section f(1)(C) does not authorize the Commission to accept and approve Class A conversions on an ongoing bases. Such a reading would make the certification for eligibility provisions, Section f (1)(B) essentially meaningless.

Further support for this position can be found in the eligibility criteria themselves. To be eligible for Class A status, an LPTV station must have been on the air 18 hours a day and provided three hours of local programming at least 90 days *prior* to enactment of the CPBA. These core eligibility requirements contemplate past, not future, behavior on the part of LPTV stations. It is quite clear that meeting these requirements in the future will not make an LPTV station eligible for Class A status. Accordingly, the statute simply cannot be read to authorize the FCC to create new Class A stations on an on-going basis.

The *Notice* suggests that Section f (2) (B) may give the FCC authority to authorize Class A LPTV stations on an on-going basis provided that the public interest, convenience and necessity would be served. Such a broad interpretation of this provision, however, would render the rest of the CPBA’s procedural provisions meaningless. Nothing in the statutory language or legislative history suggests that the provision was intended to override the filing requirements

and eligibility preconditions contained in Section f (1)(B). The most expansive interpretation of this provision would be that the FCC has the power to waive some of the qualification requirements contained in Section f (2)(A).<sup>4</sup> As a result, the section cannot be used to justify an on-going authorization of new Class A LPTV stations, beyond the original class of LPTV stations that have filed for a change of status.

### **III. All Class A LPTV Interference Standards Must Protect the Deployment of DTV.**

The FCC should proceed with the utmost caution to protect existing full service analog and DTV stations. For example, at this stage of the digital transition, there are considerable concerns about the reception capability of 8VSB digital signals. In this regard, the FCC will be addressing this issue in its biennial review.<sup>5</sup> Until this issue is resolved, the FCC must be extremely cautious and afford DTV stations maximum flexibility with respect to replication and maximization of their DTV signals. The transition to digital television is far from complete and there will be unforeseen "real world" obstacles. The interference protection criteria adopted by the FCC should provide the greatest possible protection to permit both the replication and maximization of new, full service DTV facilities.<sup>6</sup>

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<sup>4</sup>For example, an LPTV station that filed a timely certificate of eligibility that broadcast 2.90 hours of local programming may be eligible for class A status under the "public interest" provision found in Section f (2)(B). The provision however, should not be read in such a way as to eviscerate all of the qualification requirements or the specific time deadlines set for filing certificates of eligibility. The exception should not swallow the rule.

<sup>5</sup>Letter from FCC Chairman William Kennard to Martin Leader, Esq., February 4, 2000 (*dismissing the Sinclair Petition*).

<sup>6</sup>See Comments of National Association of Broadcasters and MSTV for analysis of specific interference protection criteria.

We agree with the *Notice*, that the new Class A LPTV stations will not be protected against: 1) DTV stations seeking to replicate their analog service areas within the station's allotted engineering parameters; (2) DTV stations seeking to maximize their facilities consistent with the notification procedures contained in the statute; and, (3) DTV stations making technical adjustments, including channel changes.

Because the digital television transition is still in a state of flux, we believe these exemptions should not be construed narrowly. For example, we urge the Commission to recognize that these exemptions include several key adjustments that will be necessary for some stations to transition into the digital world. First, Section (f)(1)(D) makes clear that full service DTV stations will have a full range of technical options available to them under 47 C.F.R. § 73.622 and 73.623 to make such adjustments. This will include the use of increasing power and using tilt beam antennas to provide service. Moreover, the statute states clearly that newly created Class A stations may not interfere with stations that have to change their DTV channel assignments. This issue becomes very important for stations assigned "out-of-core" DTV channels.

#### **IV. Changes In DTV Power.**

According to the *Notice*, if a DTV full service station files a change application and reduces its coverage area, its zone of interference protection will be reduced accordingly. As a result, new Class A LPTV stations may be squeezed into the full service station's previously

protected area. While we understand the policy objective behind this proposal, we would observe one cautionary note.

In a stable analog world a case may be made for permitting a Class A LPTV station to occupy spectrum which is not being used by a full service station. There are situations where an analog facility has lowered its power, remained at that power for years, and has no intention of ever increasing its coverage area. Depending on the circumstances, there may be a case for squeezing in LPTV stations in these situations. Nonetheless, technological and marketplace considerations can dramatically affect the operation of local DTV broadcast stations during the transition to digital television. In this context it is entirely possible that local stations may choose to operate at lower powers in an effort to avoid technical problems or to meet short term marketplace realities during the transition period. In these instances, such change applications may not reflect a desire to operate lower coverage areas permanently.

Accordingly, we urge the FCC to differentiate between situations where a station intends to lower its coverage area permanently and those where a change application merely reflects a decision to lower power on a temporary basis during the transition. Such a distinction could be critical for new DTV facilities given the uncertainties of the DTV rollout.

## **V. Class A Eligibility Should Be Limited to an Existing Pool of Certified LPTV Stations.**

The eligibility criteria set forth in the statute are straight forward. Of critical importance, however, is the statutory requirement that new Class A stations must have met the 18 hours per day and 3 hour local programming requirement at least 90 days before enactment of the CPBA. As discussed, *supra*, the statute does not contemplate creating an ongoing pool of new Class A facilities. Instead, the statute was designed to permit a one-time conversion of a single pool of existing LPTV stations that met these criteria *before* the statute was enacted.

The *Notice* also solicits comment on alternative eligibility criteria where the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a Class A LPTV facility. As noted previously, Section (f)(2)(B) should not be used as a means for circumventing the eligibility criteria contained in the statute. The more appropriate construction of this provision would be to apply it on a case by case basis in limited and compelling situations. Moreover, it should only apply to the initial pool of LPTV Class A stations that have filed timely eligibility certifications and timely applications.

## **VI. Class A LPTV Stations Should Not Interfere with Adjustments Necessary to Accommodate Full Service Stations Assigned DTV Channels Outside the Core.**

One of the most critical issues to be resolved in this proceeding is the treatment of full service television stations that have assignments outside the core. Two situations can arise. The first scenario is when an existing "in core" analog facility has been assigned a DTV channel outside the core. The second scenario occurs when both the existing analog and the digital channel have been placed on channels "outside the core."

Providing interference protection to new Class A LPTV facilities could prevent these stations from transitioning to digital television. The most egregious situation occurs when both the analog and digital stations have been assigned "out of core" channels. In these cases, the full service broadcaster does not yet know its final DTV channel assignment. As a result it is impossible for the broadcaster to preserve either its replication or maximization rights. Moreover, because the station does not know its final DTV channel location, it will be impossible for these stations to file a maximization application by the May 1, 2000, deadline.

Such stations are confronted with a perfect "Catch 22" situation. They must file a maximization application to preserve their rights. However, they cannot file a maximization application until the FCC assigns them an "in core channel." Of course they could file a maximization plan based on their temporary "out of core" DTV assignment. Such an approach is wasteful, because the stations will not be operating on those channels after the transition.

Moreover, it will not help Class A LPTV stations because the interference protections will ultimately involve another “in-core” channel.

Fortunately, the statute contemplates the possibility of this situation. There should be no question that the situation described above falls under the technical resolution provisions of Section (f) (1) (D). This section gives the FCC the authority to make such technical changes if engineering problems arise after granting certification of the Class A facility. Section (f)(1)(D) (i) (ii) provides for such relief with respect to replication and maximization. The Conference Committee stated:

Subparagraph (D) mandates that the FCC must act to preserve the signal contours of an LPTV station pending the final resolution of its application for a Class A license. In the event technical problems arise that require an engineering solution to a full-service station’s allotted parameters *or channel assignment* in the DTV table of allotments, subparagraph (D) requires the FCC to make the necessary modifications to ensure that such full-service station can replicate or maximize its service areas, as provided for in the FCC rules. (*Emphasis supplied*)<sup>7</sup>

Thus, the legislative history makes it clear that problems surrounding the assignment of channels, which is precisely the situation with “out-of-core” channel assignments, constitutes a technical problem within the scope of technical resolution provisions of the statute. Accordingly, interference protections for Class A LPTV stations must give way to channel changes resulting from movement in the DTV table of allotments. This includes both the ability of the full service station to replicate and/or maximize its coverage area on the newly assigned channel. Further

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<sup>7</sup>*Joint Explanatory Statement* at 63.

support for this position can be found in Section (f)(7)(A)(ii). According to this section, Class A low power stations are prohibited from interfering with the replication or maximization of full service stations even where “technical problem” are not present.

ALTV believes strongly that the rules implementing the station should take into account the unique problems confronting stations that have currently been assigned “out-of-core” DTV channels. These stations may not be assigned their final DTV channels until well after May 1, 2000. It is unfair to penalize these stations because the FCC wants to clear out channels 52 to 69 for other purposes.<sup>8</sup>

ALTV supports the solution proposed in comments filed by WLNY-TV, Inc.<sup>9</sup> WLNY-TV is presented with precisely the “out-of-core” problem presented above. It operates on analog channel 55 and holds a construction permit for its assigned digital channel 57. Both channels are “out-of-core.” Consistent with the statute, it has filed a notice of intent to maximize, but will

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<sup>8</sup>It is worth noting that with respect to these “out of core” situations, the FCC is not dealing with a new DTV licensee, *per se*. The FCC is not faced with the situation where a new licensee is attempting to supplant a pre-existing Class A LPTV station. Even though these “out of core” stations have not been given their final DTV allotment, they are pre-existing licensees. Whatever “in-core” DTV channel is ultimately assigned, it is a unitary license with the existing analog channel. It is an extension of the existing license. Thus, the FCC is not dealing with a new DTV entrant that has filed after the Class A certificate of eligibility has been granted.

<sup>9</sup>See Comments of WLNY-TV, Inc, in MM Docket No. 00-10, February 10, 2000.

have difficulty filing an actual application because it has not yet been assigned its final DTV allotment.<sup>10</sup> WLNY proposes the following:

As part of the transition from analog to digital operations, some stations will be continuing DTV operations on their assigned DTV channels, while others will convert to DTV operations on their analog channels. In either event, at the end of the transition, the channels on which these stations discontinue operations will be reclaimed by the Commission and become available for other parties. As soon as in-core channels (2-51) are known to become available as a result of this process, whether because by an election by a station as to which of its "paired" channels it intends to use for permanent DTV operations or otherwise, the Commission should issue a public notice listing those channels and their locations. Station WLNY and other similarly situated full power stations which are without permanent DTV channels, (because their analog and digital channel assignments are both outside of the core spectrum) should then be afforded first priority in securing (without auction) in-core channels on which stations can replicate their existing service areas and "maximize" their DTV facilities.<sup>11</sup>

This approach appears to be a reasonable solution to a rather complex problem.

These stations should have the right to preserve their ability to replicate and maximize their facilities. This can be accomplished by conditioning the grants of Class A status to LPTV station located in the 13 markets where these situations exist. In these markets the interference protections afforded to the newly created Class A LPTV stations would be subject to the rights of the full service stations to both replicate and maximize their coverage areas.<sup>12</sup>

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<sup>10</sup>There are approximately 12 other stations in this similar situation.

<sup>11</sup>Comments of WLNY-TV, Inc. at 5

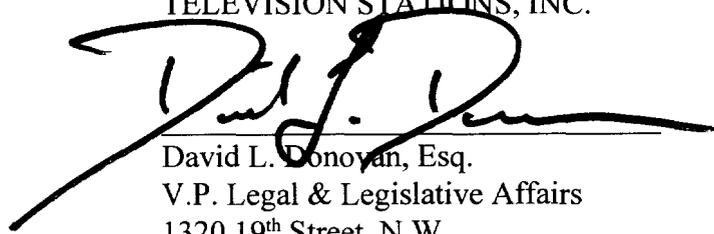
<sup>12</sup>Comments of WLNY-TV at 6.

In these situations it makes little sense to force stations to file maximization applications for "out of core" DTV channels that will be occupied only on a temporary basis. Instead the FCC should consider letters of intent to maximize as an "application for maximization." In this way, the FCC will know which markets may be subject to further replication and maximization issues. This will also place LPTV stations in those markets on notice that future changes may occur.

## VII. Conclusion

ALTV recognizes the desire of Congress to protect a selected class of LPTV stations that have met the necessary requirements to achieve Class A status. Nonetheless, Congress was explicit in its desire to avoid problems with the roll out of full service DTV television. We urge the FCC to keep this overarching objective in mind as it resolves the issues in this proceeding.

Respectfully Submitted  
ASSOCIATION OF LOCAL  
TELEVISION STATIONS, INC.

A large, stylized handwritten signature in black ink, appearing to read "David L. Donovan".

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