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

In the Matter of:	)	
	)	
Establishment of a Class A Television Service	)	FCC 99-257
	)	
	)	MM Docket No. 00-10
	)	MM Docket No. 99-292
	)	RM-9260

To: The Commission

COMMENTS OF THE
ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS

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The Association of America's Public Television Stations ("APTS") hereby submits these Comments in response to the above-captioned Notice of Proposed Rule Making ("NPRM"). APTS is a nonprofit organization whose members comprise nearly all of the nation's 352 noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, as well as engaging in planning and research activities on behalf of its members.

Introduction and Summary of Position

Public television is in the midst of the transition of its analog stations to digital operations. Any rules the Commission adopts to develop a Class A LPTV licensing scheme must not interfere with, and must ensure the protection of, the operations of noncommercial analog and digital stations. Further, as part of its mission to deliver a noncommercial educational service to unserved or underserved areas, public television

relies heavily on television translator stations, without which significant segments of the American population would be unable to receive the services mandated by Congress. The lack of adequate protection from Class A LPTV stations may cause the loss of key translator stations that would deprive multiple communities of the kind of unique service only public television stations provide.[1]

Therefore, the mission of public television may be adversely impacted during the transition to digital if the Commission does not appropriately protect full power analog and digital public television stations and noncommercial television translator stations in developing low power Class A rules. Although the Act includes some measures of protection for full power and translator stations, it does not fully address the need for protection in the critical circumstances discussed herein. Additionally, the Commission's Class A rules must include reasonable limitations on the acceptance and processing of Class A applications. If not, the unfettered entrance of potentially hundreds of new low power Class A licensees into markets around the country would surely compromise the integrity of the public television system upon which so many Americans rely.

Congress has made it clear throughout the history of public broadcasting that the unique services offered by noncommercial stations should be made available on a universal service basis. From the enactment of the Educational Television Facilities

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[1] In some cases, translators are part of an integrated system whereby one translator feeds another. Currently, public television stations operate approximately 800 television translator stations serving communities in 44 states. Most of the translators are in the sparsely populated areas of the western states, such as Arizona, Colorado, Nebraska, New Mexico and Utah, but there are a substantial number of public television translators operating in New Jersey, New York, Ohio, Pennsylvania and Virginia. See Comments of the Association of America's Public Television Stations, In the Matter of Petition for Rulemaking of the Community Broadcasters Association to Establish a Class A Television Service, RM-9260 (May 22, 1998), p. 7.

Act in 1962[2] through the passage of the Public Broadcasting Act of 1967[3] and subsequent amendments, Congress has consistently stated that public broadcast service should be made available to all U.S. citizens.[4] In 1992, Congress again determined that "[I]t is in the public interest for the Federal Government to ensure that *all citizens of the United States* have access to public telecommunications services . . .[5] It is important that any rules the Commission adopts to implement Class A licenses not negatively impact the delivery of these essential public television services to the public.

I. Class A Low Power Television Applicants Must Protect Full Power Analog and Digital Television Stations and Translator Stations to the Fullest Extent Possible Within the Law

The Community Broadcasters Protection Act of 1999 ("the Act")[6] directs the Commission to prescribe regulations establishing a Class A low power television service within 120 days of enactment and to elevate certain low power stations from secondary status to primary status within certain restrictions. One of the key restrictions is that a Class A low power station must not interfere with the operations of full power stations. Nor should a Class A low power station interfere with some low power and translator stations. In particular, the Act requires that Class A stations not interfere with:

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[2] Educational Television Facilities Act, Pub. L. No. 87-447, 76 Stat. 64 (1962), *reprinted in* 1962 U.S.C.C.A.N. 79, 81 (funding should be made available to "serve the greatest number of persons and serve them in as many areas as possible . . .").

[3] Pub. L. No. 90-129, § 201, 81 Stat. 369 (1967).

[4] *Id.*, (codified at 47 U.S.C. § 396(a)(5) (1967)) (emphasis added).

[5] Pub. L. No. 102-356, 106 Stat. 949 (1992) (emphasis added).

[6] 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).

(a) the predicted Grade B contour (as of November 29, 1999 or as proposed in a change application filed on or before November 29, 1999) of any television station transmitting in analog format;[7]

(b) the digital television service areas provided in the DTV table of allotments;[8]

(c) the digital television areas explicitly protected in the Commission's digital television regulations;[9]

(d) the digital television service areas of stations granted digital licenses by the FCC subsequent to the DTV table of allotments but prior to the filing of a Class A application;[10]

(e) the digital service area of stations that submit a timely notice of intent and application to maximize power under the FCC's rules;[11] or

(f) any licensed, authorized or pending LPTV or translator station.[12]

If a Class A applicant meets these conditions, it will receive the same license terms and renewal standards as any full-service television licensee, and will be accorded primary regulatory status.[13]

APTS is pleased to see this important range of interference protections articulated in the Act and anticipates that the Commission will implement each of these protections in its rules as required by Congress. However, as the Commission has recognized, the Act has not addressed several issues that are of concern to APTS. Specifically, the Act does not address:

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[7] 47 U.S.C. §336(f)(7)(A)(i) as amended by section 5008.

[8] 47 U.S.C. §336(f)(7)(A)(ii)(I) as amended by section 5008.

[9] 47 U.S.C. §336(f)(7)(A)(ii)(II) as amended by section 5008.

[10] 47 U.S.C. §336(f)(7)(A)(ii)(III) as amended by section 5008.

[11] 47 U.S.C. §336(f)(7)(A)(ii)(IV) as amended by section 5008.

[12] 47 U.S.C. §336(f)(7)(B) as amended by section 5008.

[13] 47 U.S.C. §336(f)(1)(A) as amended by section 5008.

• whether pending analog applications for new facilities should have priority over new applications for Class A licenses;

• whether full power analog stations may be able to seek changes in facilities that produce interference with Class A stations;

• whether television stations, especially those with digital allotments outside of the core, that wish to return to their analog channels and maximize service after the end of the transition will be protected from Class A interference; and

• whether new DTV licensees should be relieved from protecting Class A stations from interference.

Accordingly, APTS contends that where the Act is silent, the Commission should adopt rules to ensure that Class A low power television stations protect full power analog and digital public television stations as well as the translator stations associated with such stations against interference. Such rules would ensure that the delivery of valuable noncommercial educational services to the underserved and unserved communities of this nation remains viable.

A. Class A LPTV Licensees Must Protect Pending New Analog Applications

While Class A licensees are required by the Act to protect against interference with pending low power and translator stations,[14] the Commission's rules should require that Class A licensees also should protect against interference to pending full power analog applications for new facilities and new or modified allotment proposals for such facilities. The Commission proposes to interpret the absence of a statutory

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[14] "[T]he Commission may not grant an application for a Class A license or modification of license unless the applicant shows that the Class A station will not cause interference within the protected contour of any LPTV or low power TV translator station that was licensed, or for which a construction permit was issued, or for which a pending application was filed prior to the date the Class A application was filed." See In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed

command that pending applications for new full power analog stations be protected against Class A stations as a prohibition against protecting the facilities proposed in such applications.[15] APTS submits that it would be inequitable and contrary to the primary status of full power stations for pending full power analog applications to become secondary to subsequent low power Class A applications. Giving a new Class A applicant priority over pending analog applicants would be unprecedented, as there are no known circumstances in which a later filed application has been given precedence in this manner by the Commission.

B. Class A LPTV Licensees Must Protect Analog Stations Modifying Facilities

Full power analog stations should be able to seek increases in power output and antenna height that produce interference with Class A stations. Again, the statute is silent in this regard, and the Commission proposes that this silence means that modification proposals by full power analog stations should ensure no interference with the secondary low power television service.[16] APTS disagrees. To interpret the statute in this manner would inequitably raise the status of Class A stations above that of existing full power and analog television stations. Such a result would be inconsistent with the purpose of the statute and the intent of Congress to preserve the viability of existing LPTV stations, but not at the expense of full power television stations.[17]

Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000), ¶38, and 47 U.S.C. §336(f)(7)(B). APTS supports this interpretation of the statute.

[15] "Under this interpretation, pending applications for new NTSC full power stations would not be protected...." In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000) ¶27.

[16] Id.

[17] Section-by-Section Analysis to S. 1948, the "Intellectual Property and Communications Omnibus Reform Act of 1999," as printed in the Congressional Record of November 17, 1999 at S14724.

C. The Commission Must Protect Stations Seeking to Maximize When Returning DTV Operations to Analog Channels

Stations that wish to return to their analog channels should be able to maximize their service areas at any time without having to first maximize on their digital channels. The Act provides that a Class A application for license or license modification may not be granted where the proposal would interfere with stations seeking to "maximize power" under the Commission's digital television rules, so long as such stations had complied with the notification requirements in section (f)(1)(D) of the statute.[18] APTS agrees with the Commission's interpretation of the Act to require that Class A applicants must protect all stations seeking to replicate or maximize their DTV power regardless of the existence of "technical problems."[19] However, APTS urges the Commission also to ensure that stations who subsequently move their digital operations to their original analog channels or other channels within the core after the transition be allowed to maximize at that time and to benefit from protections against interference by Class A licensees.[20]

It is illogical to require stations to maximize on digital channels that are outside the core when these stations know they will be returning to their analog channels or other channels within the core. Protecting subsequent maximization on previously analog channels is consistent with the Commission's continuous assurances that

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[18] 47 U.S.C. §336(f)(1)(D). The Commission should interpret the term "maximize" to refer both to power/antennae upgrades and to stations seeking to extend their service areas beyond the NTSC replicated areas by relocating their stations from the allotted sites. See In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000) ¶32.

[19] See In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000) ¶33.

[20] Id. at ¶34.

television licensees have the option of returning to their NTSC allotments when the DTV transition is complete and the option to maximize their facilities on those previously analog channels.[21] It would be fundamentally unfair for the Commission, at this point in the digital transition, to depart from those assurances by not adequately protecting those stations from interference from Class A licensees.

D. New DTV Stations Must Be Protected Against LPTV Class A Interference

New DTV licensees should not have to protect Class A licensees from interference and, conversely, Class A licensees should protect new DTV stations from interference. The Act does not specifically require that new DTV entrants be protected against interference from Class A licensees.[22] While the Commission tentatively concludes from this absence that "new DTV entrants must preserve the service areas of LPTV stations that have been granted a certification of eligibility,"[23] APTS disagrees.

The Commission retains ample authority to preserve the transition to digital by requiring that Class A applicants protect new DTV entrants. Otherwise, contrary to its avowed policy, the Commission would in fact be discouraging DTV investment and construction by restricting the availability of DTV licenses and opportunities. Further, the Commission would be ignoring the stated directive of Congress to protect analog and digital television services. Congress clearly recognized the importance and engineering complexity of the Commission's plan to convert full power stations to

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[21] In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, MM Docket 87-268, FCC 98-315 (adopted November 24, 1998, released December 18, 1998).

[22] 47 U.S.C. §336(f)(1)(D).

[23] See In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000), ¶31.

digital operations and the absolute necessity of ensuring the ability of these stations to provide both digital and analog services.[24]

II. Class A Low Power Television Applications Should be Subject to Reasonable and Prudent Limitations

A. No New Applications for Class A Status Should Be Accepted

As is clear from the language of the Community Broadcasters Protection Act, the purpose of the Act is to preserve the service areas of established low power licensed broadcasters. Accordingly, the Commission does not have the authority to entertain applications from entities seeking Class A status who are not already licensed to operate a low power broadcast station. For instance, the Act requires the Commission to prescribe regulations establishing a Class A service "to be available to licensees of qualifying low power television stations."[25] Moreover, the Act directs the Commission to "preserve" the services areas of low power "television licensees."[26] By restricting the application process to established licensees and by directing the Commission to "preserve" the service areas of such licensees, Congress did not intend that the Commission allow other, future and non-established entities to apply for Class A status. Indeed, findings of Congress indicate that the Act is intended to afford relief to a small number of existing license holders who operate low power television stations in a manner beneficial to the public good.[27] The Commission has recognized this limitation,

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[24] Section-by-Section Analysis to S. 1948, the "Intellectual Property and Communications Omnibus Reform Act of 1999," as printed in the Congressional Record of November 17, 1999 at S14724.

[25] 47 U.S.C. §336(f)(1)(A)(emphasis added).

[26] 47 U.S.C. §336(f)(1)(D).

[27] See Sec. 5008(b).

and it proposes simply to "preserve" the service areas of existing low power television licensees.[28]

However, the Commission seeks comment on whether it should continue to accept applications to convert to Class A status beyond the deadline established by statute.[29] In directing the Commission to establish a Class A service, Congress stated that licensees intending to seek Class A designation "shall" submit a certification of eligibility within 60 days after the date of enactment.[30] By way of contrast, the following paragraph states that within 30 days after the Commission has adopted regulations to establish a Class A service, a licensee "may" submit an application for Class A status.[31] The Commission points to the difference between "shall" and "may," as well as its discretionary authority to determine that the public interest, convenience and necessity are served by treating a station as a qualifying low power station for Class A purposes,[32] and asks (a) whether the statute allows the Commission to continue to accept applications for Class A status after the statutory deadline and (b) if the answer is "yes," whether the Commission should do so as a matter of policy.[33]

Establishing an open-ended application period is neither consistent with the statute, nor is it wise public policy. First, although the Act gives the Commission discretion to accept applications after adoption of regulations, the words following

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[28] In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000), ¶12.

[29] Id. at ¶9.

[30] 47 U.S.C. §336(f)(1)(B).

[31] 47 U.S.C. §336(f)(1)(C).

[32] 47 U.S.C. §336(f)(2)(B).

[33] In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000) ¶9.

"may" in Section 336(f)(1)(C)[34] in fact clearly restrict the period of time in which applicants may file to 30 days after adoption of those regulations.

Second, to read the statute as allowing an open-ended application period would run contrary to the limited purpose of the statute. As has been described above, the purpose of the statute was to address the problem of a limited class of current low power television stations who may be displaced by the digital transition. Congress certainly did not intend on expanding the category of low power stations, for it was concerned primarily with "preserving" those existing stations alone. To allow more stations to apply for Class A status through an open-ended application period would in fact expand the category of Class A licensees and create greater competition among existing low power television licensees for scarce spectrum. Therefore, reading the statute to allow an open-ended application period would in fact subvert the Congressional intent of preserving the viability of current low power television stations.

Lastly, an open-ended application period would make little sense as a matter of policy, as it would make it difficult for full power stations to keep track of potential interference from low power stations and would waste valuable Commission resources. Therefore, because it is neither authorized by the statute, nor contemplated by the purpose of the Act, nor in the public interest as a matter of policy, the Commission should not adopt an open-ended application process beyond the 30 day statutory limit.

[34] 47 U.S.C. §336(f)(1)(C).

B. Class A Applications for Digital Channel Allotments Should Be Limited in Accordance with the Public Interest, Convenience and Necessity

The Act provides that the Commission is not required to issue an additional DTV license to a Class A station licensee or to a licensee of a television translator, but the Commission "shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application."[35] The Commission correctly interprets this section to mean that it need not identify a paired DTV channel for each Class A station or television translator.[36]

But the Commission also suggests this section to mean that it "should authorize a paired channel for DTV operation if the Class A or TV translator station licensee identifies and applies for an acceptable channel."[37] However, the statute says that the Commission "shall accept a license application" under such circumstances and does not require the Commission to actually grant a license. The granting of a DTV license under these circumstances still remains within the Commission's discretion to apply its analysis of the public interest, convenience and necessity. A contrary reading would imply that Congress meant to strip away the Commission's discretion to issue licenses under its public interest standard, a result with little foundation within the plain language or purpose of the Act. Indeed such an interpretation would run contrary to the statute's specific reliance elsewhere on the Commission's discretion in establishing

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[35] 47 U.S.C. §336(f)(4).

[36] In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000) ¶23.

[37] Id.

qualifying standards for Class A license applications under its public interest standard.[38] Therefore, the Commission may accept a Class A application for a digital television license, but is not obligated to actually issue any particular license unless it scrutinizes the application in accordance with a defined set of criteria and determines that the public interest would be served by issuance.[39]

Second, noncommercial licensees, and the translator stations that serve them, should have priority over Class A low power television stations when they are re-engineered back into the DTV core. Several public television stations have DTV licenses that are located outside of the DTV core of channels 2-51. Many of these licensees will be seeking allotments located within the DTV core when the transition is complete. Additionally, many displaced public television translator stations are seeking to engineer into the DTV core.

The Commission has stated its confidence that sufficient channels will be available to provide all out-of-core stations with new DTV channels.[40] Nevertheless, for the Commission to give priority to low power television Class A licensees within the core over those of noncommercial licensees would make it much more difficult for public television full power and translator stations to locate in the core and, thereby, more difficult for public television stations to reach the audiences they serve.

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[38] "For purposes of this subsection, a station is a qualifying low power television station if -- ... (B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low power television station for purposes of this section, or for other reasons determined by the Commission." 47 U.S.C. §336(f)(2).

[39] APTS agrees with the Commission that those Class A television licensees who qualify for and are awarded a DTV allotment, should be authorized to operate only on channels 2-51. See In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000) ¶51.

[40] In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, MM Docket 87-268, FCC 98-315 (adopted November 24, 1998, released December 18, 1998).

Accordingly, Class A low power television licensees should not have priority over noncommercial educational television stations and translators that extend those stations' signals who are seeking channels within the DTV core.

C. APTS Supports a Petition to Deny Period for LPTV Class A Applicants

The Commission's first Notice of Proposed Rulemaking proposed a petition to deny stage for any Class A license application. In its first Notice, the Commission stated:

> "The opportunity to file petitions to deny could serve to give some assurance that Class A facilities increases would not result in interference to existing service. This approach would essentially duplicate the process we now use in considering LPTV displacement applications."[41]

In its most recent Notice of Proposed Rulemaking, the Commission again solicited comments on whether it should subject Class A applicants to a petition to deny filing period.[42]

APTS supports the creation of a petition to deny period and urges that public television full power as well as translator stations be furnished with the ability to file such petitions. Such a period would provide a necessary protection against unwarranted congestion of the spectrum caused by multiple Class A stations and would afford television stations the opportunity to protest against LPTV Class A applications that would cause interference or otherwise negatively impact those television stations.

As the Commission noted in its first Class A rulemaking, the process would be

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[41] In the Matter of Establishment of a Class A Television Service, Notice of Proposed Rulemaking, FCC 99-257, MM Docket No. 99-292 (September 22, 1999) ¶56.

[42] In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000) ¶47.

neither unique nor novel.[43] Although the Act does not mandate a petition to deny period, neither does it forbid such a procedural method of managing applications. Indeed, the Act specifically states that

> "Except as provided in paragraphs (6) [interim qualifications] and (7) [non-interference standards], the Commission shall, within 30 days after receipt of an application of a licensee of a qualifying low power television station that is acceptable for filing, award such a class A television station license to such licensee."[44]

In other words, the Commission retains the power to determine criteria for granting licenses to low power television stations that wish to apply for Class A status. This determination should include analysis of petitions to deny from the public.

D. APTS Supports an Application Cap on Class A Applicants

APTS remains concerned that by granting an excessive amount of Class A applications, the resulting congestion of spectrum may adversely affect the ability of displaced translators to relocate to new spectrum. APTS is also concerned that by granting too many Class A applications, the Commission will inadvertently hinder the replacement of the reserved but deleted non-commercial channels as well. Accordingly, APTS proposes that the Commission impose an individual licensee numerical cap on Class A applications on a nationwide basis. This limit on applications would be a reasonable and prudent method of ensuring that the proliferation of Class A stations not have the unintended result of crowding out other valued broadcast services. In addition, an application cap would simultaneously ensure that the public has access to existing low power Class A television programming by giving Class A television stations the needed "breathing space" to establish a commercial advertising base

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[43] In the Matter of Establishment of a Class A Television Service, Notice of Proposed Rulemaking, FCC 99-257, MM Docket No. 99-292 (September 22, 1999) ¶56.

without facing excessive competition from new commercial Class A broadcast applicants.

Nothing in the plain language of the Act forbids the management of the application process in this way. Indeed, by speaking of applications that are "acceptable for filing,"[45] Congress surely meant to give the Commission the ability to determine filing qualifications, which should include an individual licensee application cap.

E. Class A Applications Should not Divert Valuable Commission Resources Away from its Duty to Process Outstanding Translator Applications

APTS directs the Commission's attention to the fact that the last regular filing window for television translators was in 1994, and many translator applications are being processed at the FCC.[46] Because there is a significant backlog of translator applications within the Low Power Branch, it would certainly impose an even greater burden upon the Branch, and would further delay the resolution of these pending applications, if the Branch were to devote considerable time to the review and issuance of Class A licenses. Accordingly, APTS respectfully suggests that Class A license applications be processed under a separate processing scheme by a discreet branch within the Mass Media Bureau.

III. Alternatively, Public Television Translator Stations That Provide Essential State-Wide Connection to Unserved and Underserved Communities Should Have the Opportunity to Apply for Class A Status

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[44] 47 U.S.C. §336(f)(1)(C) as amended by section 5008 (emphasis added).

[45] 47 U.S.C. §336(f)(1)(C) as amended by section 5008.

[46] In the FCC's June, 1999 window opening for displaced translators, over 150 translator applications were filed from television licensees for translator channels in the state of Utah alone.

One way to help ensure the integrity of public television systems is to allow translator stations associated with these systems to apply for Class A status themselves. In fact, the Commission itself raised this possibility in its first Notice of Proposed Rulemaking when it stated:

> "We also wish to consider if there are circumstances under which it would be appropriate to extend opportunities for Class A status to certain television translator stations. Translator stations deliver television programming to remote communities and are often a community's only means of receiving free off-air television programming, particularly at locations where the signals of the nearest TV stations are blocked by mountainous terrain [footnote omitted]."[47]

Congress has created two ways in which an applicant can qualify for Class A status. On one hand, an LPTV station must, during the 90 days preceding November 29, 1999, have broadcast a minimum of 18 hours per day, including at least 3 hours per week of locally originated programming, and it must also be in compliance with the Commission's rules on low power television service. From and after the date of its application for a Class A license, it must also be in compliance with the Commission's rules for full-service television stations.[48] Television translator stations would most likely not meet these qualifications unless the locally originated programming requirement could be interpreted to allow for the rebroadcast of locally produced programming. In fact, the FCC has noted that this is precisely what the National Translator Association has proposed.

> "The National Translator Association believes that a translator should be able to meet a minimum local programming qualification for Class A status by rebroadcasting the local programming of a full service station

[47] In the Matter of Establishment of a Class A Television Service, Notice of Proposed Rulemaking, FCC 99-257, MM Docket No. 99-292 (September 22, 1999) ¶23.

[48] 47 U.S.C. §336(f)(2)(A) as amended by section 5008.

> within that station's Grade B contour. We seek comment on this proposal."[49]

APTS supports this proposal as an effective and possible solution to the problem of displaced translators in a world of numerous low power Class A licensees. It is consistent with the Act and addresses the needs of public television as well as the Americans public television serves.

Alternatively, the Commission may also qualify an LPTV station as a Class A licensee if it determines that such qualification would serve the public interest, convenience, and necessity or for other reasons determined by the Commission. The Act states:

> "(2) QUALIFYING LOW POWER TELEVISION STATIONS – For purposes of this subsection, a station is a qualifying low power television station if ...(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low power station for purposes of this section, or for other reasons determined by the Commission."[50]

In its most recent Notice of Proposed Rulemaking, the Commission recognized this alternative method of qualification and invited comments on whether it should establish a different set of criteria for certain types of stations, "such as foreign language stations or translators that have converted to low power status," that cannot meet the locally produced programming or other statutory eligibility criteria.[51]

Given the powerful and long-standing Congressional mandate to deliver noncommercial educational services to all Americans, including those living in rural, unserved or underserved areas, and given that many public television systems rely

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[49] In the Matter of Establishment of a Class A Television Service, Notice of Proposed Rulemaking, FCC 99-257, MM Docket No. 99-292 (September 22, 1999) ¶23.

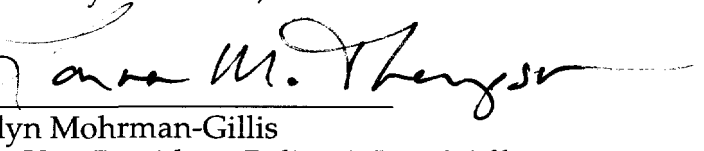
[50] Sec. 5008(c), now codified at 47 U.S.C. §336(f)(2)(B).

heavily on translators to accomplish this goal, it would no doubt be in the public interest to allow public television translator stations to qualify for Class A status without imposing additional local programming requirements in excess of the plain language quoted above.

Conclusion

Any rules the Commission adopts to develop a Class A LPTV licensing scheme must not interfere with, and must ensure the protection of, the operations of noncommercial analog, digital, and translator stations. Additionally, the Commission's Class A rules must include reasonable limitations on the acceptance and processing of Class A applications. APTS implores the Commission to adopt rules to ensure reasonable parameters on the operations of Class A licensees and to protect against the unfettered entrance of new low power Class A licensees into markets around the country.

Respectfully submitted,



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[51] In the Matter of Establishment of a Class A Television Service, Order and Notice of Proposed Rulemaking, FCC 00-16, M Docket No. 00-10, and 99-292 (January 13, 2000) ¶21.