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

In the Matter of)

Establishment of a Class A
Television Service)

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

REPLY COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

Sinclair Broadcast Group, Inc. ("Sinclair"), by its attorneys, hereby files these "Reply Comments" in the above-captioned proceeding^{1/} initiated by the Commission to implement the Community Broadcasters Protection Act of 1999 ("CBPA").^{2/} As Sinclair and other parties argued in their Comments in this proceeding, the CBPA adds an additional layer of uncertainty to the DTV transition by requiring full-service DTV and NTSC broadcasters to protect Class A LPTV stations. The Commission can minimize such uncertainty, however, by strictly adhering to the requirements for Class A status, refusing to accept Class A applications in the future, affording full service broadcasters the flexibility to make allotments adjustments, protecting all full service stations seeking to replicate or to maximize DTV power, and preserving the right of full service DTV broadcasters to maximize on their original analog channel after the DTV transition.

^{1/} Establishment of a Class A Television Service, *Order and Notice of Proposed Rule Making*, MM Docket No. 00-10, MM Docket No. 99-292, RM-9260 (Jan. 13, 2000) ("CBPA NPRM").

^{2/} Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999) ("CBPA").

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Background

On November 29, 1999, Congress passed the CBPA with the intention of protecting those “*small number*” of low-power television (“LPTV”) stations that presently serve the public interest by providing programming to their communities that would not otherwise be available.^{3/} On January 13, 2000, the Commission released an *Order and Notice of Proposed Rule Making* seeking to implement the CBPA.^{4/} In its Comments on the *CBPA NPRM*, Sinclair urged the Commission to strictly adhere to the three requirements for Class A status listed in Section (f)(2)(A) of the CBPA and to refrain from reading the “public interest, convenience, and necessity” clause of (f)(2)(B) as a broad mandate to grant Class A status to LPTVs that do not meet the qualification requirements.^{5/} Sinclair also urged the Commission to avoid reading Section (f)(2)(B) as authority to grant or accept Class A applications outside of the strict time frame provided by Congress.^{6/} Sinclair further noted that while the establishment of Class A LPTV service will limit broadcasters’ flexibility to craft solutions to interference problems between full service DTV and NTSC broadcasters during the DTV transition, the Commission can take steps to ensure that full service broadcasters retain some flexibility. Specifically, Sinclair suggested that the Commission (i) afford full service broadcasters flexibility to make

^{3/} CBPA, § 5008(b)(1) (emphasis added).

^{4/} See *CBPA NPRM*.

^{5/} Comments of Sinclair at 4-10.

^{6/} *Id.* at 10-12.

allotment adjustments;^{7/} (ii) protect all full service stations seeking to replicate or to maximize DTV power, regardless of technical problems;^{8/} (iii) preserve the right of full service DTV broadcasters to maximize on their original analog channel after the DTV transition;^{9/} (iv) require Class A stations to protect the Grade B contour of full service NTSC stations that modify their NTSC facilities in order to collocate with their DTV facilities or with the facilities of other broadcasters in the same market, at least until May 1, 2002;^{10/} and (v) require Class A stations to protect the maximum facilities of full service NTSC stations, until at least May 1, 2002.^{11/}

While Sinclair's positions enjoy support from many commenters, many LPTV advocates have interpreted the CBPA in a way that bears no deference to the plain meaning of the statute to advance their own self interests. Such skewed interpretations of the CBPA will not only thwart the intent of Congress, but will also substantially impede the DTV transition to the detriment of the American television viewing public. Below, Sinclair addresses these commenters.

I. The Commission Must Strictly Adhere to the Requirements for Class A Status

To ensure that only those "small number" of LPTV stations envisioned by Congress qualify for Class A status, Sinclair urged the Commission to strictly adhere to the Congressionally mandated requirements for Class A status delineated in Section (f)(2)(A) of the

^{7/} *Id.* at 12-13.

^{8/} *Id.* at 14.

^{9/} *Id.* at 14-17.

^{10/} *Id.* at 18-19.

^{11/} *Id.* at 19.

CBPA.^{12/} Other commenters support the view that the Commission must strictly adhere to the three statutory eligibility criteria and refrain from granting waivers of these requirements.^{13/}

Many LPTV interests, however, read the “public interest, convenience, and necessity” clause of Section (f)(2)(B) as a way to gain Class A status despite falling far short of the statutory eligibility criteria.^{14/} These LPTV stations argue that, although they fail to meet one or two or even all three of the eligibility requirements, they nevertheless merit Class A status pursuant to the public interest clause. Some commenters even argue that they should be able to meet the eligibility requirements at some point in the future, despite Congress’ clear intent that the three requirements for Class A status be met during the 90 days preceding enactment of the CBPA.

In enacting the CBPA, Congress was well aware of the detrimental impact the CBPA would have on the DTV transition and, accordingly, tried to limit the potential pool of Class A stations in two ways: (i) by adopting strict eligibility requirements; and (ii) by requiring potential Class A stations to file a certificate of eligibility by January 28, 2000. Congress intended for Section (f)(2)(B) to allow the Commission to deviate slightly from the three eligibility requirements in certain extraordinary cases.^{15/} In order to ensure that the CBPA does not

^{12/} Comments of Sinclair at 4-10.

^{13/} See Comments of Fox Television Stations, Inc. and Fox Broadcasting Company at 3 (“Fox”); Comments of Pappas Telecasting Companies at 17-19 (“Pappas”); Comments of WB Television Network at 22-23 (“WB”).

^{14/} See, e.g., Comments of Entravision Holdings, LLC at 4-5 (“Entravision”); Comments of First United, Inc.

^{15/} See Comments of Fox at 3 (arguing that (f)(2)(B) “does not provide the Commission with carte blanche authority to ignore the statutory eligibility criteria for Class A licenses”); Comments of Association for Local Television Stations, Inc. at 5 & n.5, 8 (“ALTV”).

substantially impede the DTV transition, the Commission must refrain from using the public interest clause of (f)(2)(B) to liberally grant Class A status to stations that do not come close to meeting the statutory eligibility criteria.

In its Comments, Sinclair also urged the Commission in applying Section (f)(2)(B) to a Class A applicant to balance the interest in granting a Class A license to an LPTV station that does not meet the requirements of (f)(2)(A) with the effect such a grant will have on the flexibility of full service DTV stations to modify their facilities and the effect on the DTV transition in general.^{16/} Before applying the public interest provision of Section (f)(2)(B), Sinclair urged the Commission to provide notice and comment from interested parties.^{17/} With this in mind, Sinclair also supports Fox's position that a station that fails to meet the statutory eligibility criteria must bear the burden of establishing that the public interest would be served by granting the station Class A status.^{18/}

II. The Commission Must Refrain From Accepting Class A Applications in the Future

In its Comments, Sinclair argued that the mandatory language of Section (f)(1)(B) limits the potential pool of Class A LPTV stations to only those LPTV licensees who have filed a certificate of eligibility by January 28, 2000.^{19/} Thus, the Commission cannot accept Class A applications in the future. As the only logical interpretation of the CBPA, this reading not

^{16/} Comments of Sinclair at 10; *see also* Comments of Cosmos Broadcasting Corporation at 8.

^{17/} *Id.* at 10.

^{18/} Comments of Fox at 3.

^{19/} Comments of Sinclair at 11.

surprisingly enjoys substantial support in the record.^{20/}

Despite the clear and unambiguous language of Section (f)(1)(B), however, many LPTV interests argue that the Commission can use the “public interest, convenience and necessity” clause of Section (f)(2)(B) to grant applications outside of the time frame established by Congress. The Commission must reject such arguments. Such a reading of the CBPA bears no deference to the structure of the CBPA. The public interest clause of Section (f)(2)(B) refers only to the eligibility requirements for Class A status.^{21/} To even reach the issue of whether a given LPTV station is eligible for Class A status, however, the station must have filed a certificate of eligibility by January 28, 2000. Sinclair and other comments have also urged the Commission to refrain from accepting or granting Class A applications in the future as a matter of policy.^{22/}

III. Class A Stations Must Comply With All Technically Feasible Part 73 Rules

Not surprisingly, while many LPTV stations claim that they merit Class A status and the interference protection that comes with such status, they nevertheless claim they should not be burdened with the same obligations as full service broadcasters.^{23/} These LPTV stations then

^{20/} See Comments of Association of America’s Public Television Stations at 10-12 (“AAPTTS”); Comments of ALTV at 3-5; Comments of Fox at 2-3; Comments of The Association for Maximum Service Television, Inc. and the National Association of Broadcasters at 15-17 (“MSTV/NAB”).

^{21/} See Comments of ALTV at 4-5; Comments of MSTV/NAB at 15-16.

^{22/} See Comments of Sinclair at 12; Comments of ALTV at 4-5; Comments of MSTV/NAB at 16.

^{23/} See, e.g., Comments of North Rocky Mountain Television, L.L.C. at 4-5.

unabashedly proceed to pick and choose which Part 73 rules they like and which they simply do not wish to honor.

The Commission must reject these attempts by Class A stations to avoid Part 73 obligations. Pursuant to plain text of Section (f)(2)(A)(ii), a Class A station must comply with the Commission's operating rules for full power stations from and after the date of its application for a Class A license. The language of Section (f)(2)(A)(ii) is mandatory in nature and provides for no exceptions or waivers. While the Commission acknowledges that compliance with certain technical Part 73 rules will be impossible,^{24/} Class A stations nevertheless must be subject to all technically feasible Part 73 rules, including children's television programming requirements, the main studio rule, the public inspection file rules, and political programming rules.^{25/} To exempt Class A stations from technically feasible Part 73 rules would not only violate the text of the CBPA, but would also be fundamentally unfair to full power stations that must comply with these rules. Sinclair also supports the comments of the WB, which advocates annual reporting requirements for Class A stations regarding their continued compliance with the statutory eligibility criteria and the relevant provisions of Part 73 of the Commission's rules.^{26/}

IV. The Commission Must Preserve the Right of Full Service DTV Broadcasters to Maximize on Their Original Analog, Interim DTV Channel, or Some Other Third Channel After the DTV Transition

In its Comments, Sinclair urged the Commission to ensure that full service broadcasters can replicate the maximized service area of their DTV operations on their existing analog

^{24/} See CBPA NPRM at ¶ 20.

^{25/} See Comments of Fox at 13-16; Comments of WB at 24-27.

^{26/} See Comments of WB at 27.

channel at the end of the DTV transition despite the existence of interference to a Class A station from such operation.^{27/} Sinclair noted that many full service broadcasters have developed business plans under the assumption that they would relocate their DTV service to their analog channel at the end of the DTV transition.^{28/} Also, Sinclair argued that if full service broadcasters reverting to their analog channel must accept a lesser service area after the DTV transition, then many viewers who enjoyed DTV programming during the transition will be deprived of that programming when the transition ends.^{29/}

Commenters overwhelmingly supported preserving the right of full service broadcasters to maximize on their analog channel after the DTV transition.^{30/} While Sinclair emphasized allowing full service broadcasters the right to maximize on their *original analog* channel, Sinclair also supports those commenters urging the Commission to allow broadcasters to maximize on *whatever channel* they ultimately choose to operate on after the DTV transition, whether it is their original analog channel, their interim DTV channel, or some third channel.^{31/}

Sinclair urges the Commission to clarify that a broadcaster who filed a Notice of Intent to Maximize by December 31, 1999 did not need to specify the channel on which it will ultimately

^{27/} See Comments of Sinclair at 14-17.

^{28/} See *id.* at 15.

^{29/} See *id.* at 16.

^{30/} See Comments of Blade Communications, Inc. at 6-9; Comments of Cordillera Communications, Inc. at 6-8; Comments of Delmarva at 5-6; Comments of MSTV/NAB at 7-8; Comments of Mobile Video Tape, Inc. at 3-5; Comments of Sarkes Tarzian Inc. at 2-5.

^{31/} See Comments of MSTV/NAB at 7-8; Comments of Delmarva at 5-6; Comments of Mobile Video Tapes, Inc. at 5; Comments of Sarkes Tarzian Inc. at 2-5.

maximize at the end of the DTV transition. Neither the text of the CBPA nor the Commission's Public Notice requesting Notices of Intent to Maximize^{32/} required stations to specify any particular channel.

While some commenters claim that they preserved their statutory right to maximization by specifying a number of channels on which they could possibly seek to maximize in the future,^{33/} the Commission should clarify there was no need to specify a particular channel in the Notice of Intent to Maximize. Rather, the Commission should clarify that a full service broadcaster who has filed a Notice on Intent to Maximize by December 31, 1999 (regardless of whether a particular channel was specified), and a maximization application for either its analog channel, interim DTV channel, or some other third channel by May 1, 2000, is protected from Class A stations to the extent of its maximized service area indicated in its maximization application filed by May 1, 2000 and to the extent of at least the replication of that maximized service area on whatever channel it ultimately chooses to operate on at the end of the DTV transition (and, perhaps, a greater service area depending upon the application of the 2%/10% *de minimis* interference criteria to digital operations on that channel).

^{32/} See Community Broadcasters Protection Act of 1999 Sets Deadline of December 31, 1999 for Full Service TV Stations to File Letters of Intent to Maximize Their DTV Facilities, *Public Notice*, DA 99-2739 (Dec. 7, 1999).

^{33/} See Comments of Delmarva at 5-6; Comments of Mike Simons at 3-5; Comments of Mobile Video Tapes, Inc. at 5; Comments of Sarkes Tarzian Inc. at 2-5.

Conclusion

Sinclair respectfully requests that the Commission act consistently with the views expressed herein.

Respectfully submitted,

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Dated: February 22, 2000

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I, Cherrell Y. Beach, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 22nd day of February 2000, served a true copy of the foregoing **"REPLY COMMENTS"** by U.S. Mail upon the following

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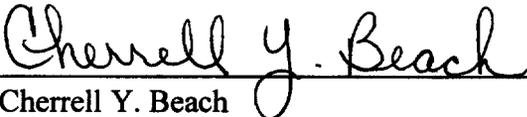
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