

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

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

**REPLY COMMENTS OF FOX TELEVISION STATIONS, INC.
AND FOX BROADCASTING COMPANY**

Fox Television Stations, Inc. ("FTS") and Fox Broadcasting Company ("FBC" and collectively with FTS, "Fox") respectfully submit these reply comments in response to Commission's Notice of Proposed Rulemaking in the above-captioned proceeding ("*Class A NPRM*") on implementation of the Class A television service for qualifying low power television ("LPTV") licensees as required by the Community Broadcasters Protection Act of 1999 ("CBPA").

I. The CBPA Preserves DTV Licensees' Right To Maximize Facilities Pursuant to Existing Commission Rules.

The overwhelming majority of the commenting parties agree that the Commission's implementation of the Class A service must not jeopardize the transition to digital television and that the CBPA preserves the right of DTV licensees to maximize their service areas pursuant to existing Commission rules regardless of the

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existence of technical problems.¹ In addition, the majority of parties that commented on the issue agree that the right to maximize must be preserved for those full-power stations that ultimately revert back to their analog channel after the transition to DTV is complete.²

Certain LPTV interests, however, mistakenly believe that the CBPA places limits on the ability of DTV licensees to maximize their service areas.³ Other than certain notification requirements, the CBPA does not limit the ability of DTV

¹ See, e.g., Comments of Association of Local Television Stations at 11; Association of America's Public Television Stations at 8; Association for Maximum Service Television/National Association of Broadcasters ("AMST/NAB") at 6-8; Channel 12 of Beaumont, Inc. at 2-3; Entravision Holdings, LLC at 5; Joint Comments of Board of Trustees, Coast Community College District, Costa De Oro Television and Palos Verdes Broadcasters at 7-8; Gateway Communications, Inc. at 5-6; Paxon Communications at 2-3; Joint Comments of Schwartz, Woods & Miller at 7-8; Sarkes Tarzian, Inc. at 2-5; Sinclair Broadcast Group at 14; WB Television Network at 18-19; Mobile Video Tapes, Inc. at 3-4; Society of Broadcast Engineers at 9; Mike Simons at 2-5.

² See, e.g., Comments of Blade Communications at 6-9; Certain Channel 2-6 Licensees at 4-7; Channel 12 of Beaumont, Inc. at 5; Educational Broadcasting Corp./WNET at 4-6; Cordillera Communications, Inc. at 5-8; Sinclair Broadcast Group at 15; WB Television Network at 19; Sonshine Family Television, Inc. at 2-5; WLNY-TV, Inc. at 6.

³ See Commercial Broadcasting Corp. at 2 (incorrectly stating that maximization only involves change to replicate existing contour); Apogee Companies at 5 (claiming that station seeking maximization should prove that new coverage is not at expense of Class A); Sherjan Broadcasting Co. at 3 (claiming that station seeking maximization beyond replication should pay costs to move LPTV); North Rocky Mountain Television at 8-9 (claiming that Class A stations should not be required to protect full-service stations' maximized facilities).

licensees to maximize their service areas pursuant to existing Commission rules. As Fox demonstrated in its comments, Congress was quite precise when it referred to the concept of maximization.⁴ In the legislative history of the CBPA, Congress cross-referenced the Commission's own definition contained in paragraph 31 of the *DTV Sixth Report and Order*.⁵ And thus any references to "maximization" or "maximized facilities" in the CBPA encompass the process by which stations increase their service areas by operating either with additional power or at higher antennae than specified in the DTV Table of Allotments pursuant to existing Commission rules. Section 73.622 of the Commission's rules governs the process by which DTV stations seek to increase or maximize their service areas and also permits a change in the location of a DTV transmitting antenna that is within 5 kilometers of the DTV reference coordinates.⁶

Moreover, contrary to the desires of certain LPTV interests,⁷ maximization is not limited to replication of the NTSC contours. Section 336(f)(1)(D) permits modifications if technical problems arise "to ensure replication . . . *and* to permit maximization" 47 U.S.C. § 336(f)(1)(D) (emphasis added). If the term "maximi-

⁴ See Comments of Fox Television Stations, Inc. and Fox Broadcasting Company, MM Docket No. 00-10, filed Feb. 10, 2000, at 11-12 ("Fox Comments").

⁵ See 145 Cong. Rec. S14725 (daily ed. Nov. 19, 1999).

⁶ See 47 C.F.R. § 73.622.

⁷ See Comments of Commercial Broadcasting Corp. at 2; Community Broadcasters Assoc. ("CBA") at 10.

zation" were merely synonymous with replication, Congress would not have needed to refer to both. Further, the Commission's existing rules allow a DTV station to maximize "up to that needed to provide the same geographic coverage as the largest station within their market," 47 C.F.R. § 73.622(f)(5). It is therefore contrary to the plain language of the CBPA to conclude, as advocated by the Community Broadcasters Association ("CBA"), that "technical problems" exist only when the DTV station seeks no more than replication of its analog service area.

II. The CBPA Does Not Expand the Protected Contour of LPTV Stations Seeking Class A Status.

The CBPA affords protection to the existing service areas of qualifying LPTV stations, but does not expand their protected contours. Certain LPTV commenting parties,⁸ however, fail to recognize that protection of Class A service areas to the Grade B contour is inconsistent with the CBPA. Specifically, section 336(f)(1)(D) provides that the "Commission shall act to *preserve* the existing service areas of low-power television licensees pending the final resolution of a class A application." 47 U.S.C. § 336(f)(1)(D) (emphasis added). The current LPTV service contour thus should continue to be the Class A protected service contour, which is Grade A (74dBu)

⁸ See Comments of CBA at 7; Commercial Broadcasting Corp. at 2; Martinez Group at 2; Larry L. Schrecongost at 3; Sherjan Broadcasting Co. at 3; Turnpike Television at 2.

for UHF and between Grade A and Grade B for VHF Hi and Low.⁹ Fox agrees that redefining the protected contour of Class A stations to the Grade B contour will likely create prohibited overlap situations where none currently exist.¹⁰ As the Commission recognized, using the protected signal contours established for the LPTV service at its inception both preserves the existing service areas of LPTV stations seeking Class A status and minimizes disruption to other services.¹¹

In addition, Fox supports the position advocated by Davis Television that newly licensed Class A stations must protect not only all NTSC licenses and unbuilt construction permits, but also NTSC applications pending at the time of enactment of the CBPA.¹² The Commission would be engaging in arbitrary and capricious rulemaking to interpret narrowly the phrase "transmitting in analog format" (47 U.S.C. § 336(f)(7)(A)) as excluding long-pending analog applications – a primary service, but at the same time afford protection from Class A stations to applications for

⁹ Compare 47 C.F.R. § 74.707 (LPTV) with 47 C.F.R. § 73.683(a) (specifying Grade A and Grade B).

¹⁰ See Comments of the Association of Federal Communications Consulting Engineers at 1; duTreil Lundin & Rackley, Inc. at 1.

¹¹ See *Class A NPRM*, para. 10.

¹² See Comments of Davis Television Clarksburg, LLC *et al.* at 3-9; see also Comments of AMST/NAB at 11-12; Paxon Communications at 4-5; WB Television Network at 7-8; Association of Federal Communications Consulting Engineers at 4; KM Communications, Inc. at 7-8; Pelican Broadcasting Co. at 2-3; Television Capital Corp. at 3-5; TV 31, L.L.C. at 3-4; Vista Communications, Inc. at 3-5; Winstar Broadcasting Corp. at 2-4.

LPTV and translator stations – which are secondary services – pursuant to section 336(f)(7)(B), 47 U.S.C. § 336(f)(7)(B).

III. Class A Applicants and Licensees Must Comply with Part 73 From and After the Date of Filing an Application for Class A License.

The CBPA provides that an LPTV station qualifies for Class A status if, among other things, "from and after the date of its application for a Class A license, the station was in compliance with the Commission's operating rules for full-power television stations." 47 U.S.C. § 336(f)(2)(A)(ii). The CBPA thus in no uncertain terms provides that Class A licensees must comply with all requirements of Part 73 of the Commission's rules applicable to television broadcasters with the limited exception of those rules with which Class A stations cannot comply due to lower operating power. Indeed, even the CBA agrees that Class A stations should be governed by Part 73.¹³

Moreover, the statute clearly provides that compliance with Part 73 is triggered upon the filing of an application for a Class A license. As Fox explained in its Comments,¹⁴ Congress fixed the universe of LPTV stations eligible for Class A designation as of January 28, 2000, but through the use of the permissive language "may" in section 336(f)(1)(C) granted flexibility with respect to the actual filing date of Class A applications. Accordingly, to the extent certain LPTVs who have filed

¹³ See CBA Comments at 16.

¹⁴ See Fox Comments at 2-3.

certifications of eligibility by January 28, 2000 need a transition period within which to come into compliance with Part 73,¹⁵ those LPTV stations must delay filing their Class A application. The CBPA simply does not provide Class A applicants and licensees a grace period within which to comply with the Part 73 rules.

Despite the claims of certain LPTV licensees,¹⁶ requiring compliance with Part 73 will not force existing LPTV licensees out of business. Requiring that Class A applicants and licensees comply with the Part 73 rules applicable to all other primary status television broadcasters, as statutorily required by the CBPA, will not create an undue burden because the CBPA does not mandate that all LPTV stations seek Class A status. Those LPTV licensees that are unable to comply with the Part 73 regulations need not comply; they can simply continue to operate as LPTV stations subject to regulation under Part 74. LPTV licensees must recognize that Congress did not allow them "to have their cake and eat it too" because along with the benefits of protected Class A status comes the additional obligations of complying with Part 73 from and after the date of filing an application for a Class A license.

¹⁵ See, e.g., Comments of CBA at 16 (transition period needed to comply with Part 73); Crawford Broadcasting Inc. at 1 (365 days needed to comply with regulations); Media-Com Television, Inc. (12 months needed to come into compliance); Skinner Broadcasting, Inc. (requesting 180 day period to come into compliance with Part 73).

¹⁶ See Comments of Commercial Broadcasting Corp. at 1; Home Shopping Club LP at 8; Roy L. McGreevy at 3; National Minority T.V., Inc. at 8-9; National Religious Broadcasters Assoc. at 7; Nicolas Communications Corp. at 7-10; North Rocky Mountain Television, L.L.C. at 4-5.

IV. The Commission Should Reject the CBA's Requests that Are Contrary to Law and the Public Interest.

The CBA's request that LPTV licensees be given priority with respect to the spectrum abandoned by full-power broadcasters upon completion of the DTV transition is contrary to statute and public policy.¹⁷ As recognized by Congress in the legislative history of the CBPA, the portion of the existing broadcast spectrum recovered at the completion of the DTV transition will be reallocated to new uses.¹⁸ Moreover, as specified by Congress in the Balanced Budget Act of 1997, the spectrum recovered following DTV transition must be auctioned.

Fox also advocates that the Commission reject the CBA's request that ERP limits apply only to the horizontal plane.¹⁹ Excessive beam tilting by the Class A service creates the potential for severe interference and therefore should not be permitted. Specifically, taboo and adjacent channel interference will be materially exacerbated by the increased field arising from excess beam tilting. Fox also notes that the Commission's antenna database does not include the elevation patterns for antennas and that the Commission's *flr* program as currently deployed cannot deal with over-tilting because it uses a fixed antenna elevation pattern. Given these limitations in the

¹⁷ See CBA Comments at v, 10.

¹⁸ See 145 Cong. Rec. S14725 (daily ed. Nov. 19, 1999).

¹⁹ See CBA Comments at 22.

database and the *flr* program, it will be virtually impossible for the Commission to evaluate meaningfully Class A applications that employ over-tilting.

Finally, Fox has no objections to Class A stations being permitted to file applications for facilities changes (other than channel changes) pursuant to existing rules governing minor changes for full-power television stations (*see* CBA Comments at 30-31) provided that such minor change requests contain a complete engineering analysis of interference.²⁰

V. Conclusion

As explained above and in the Fox Comments, implementation of the Class A service will exacerbate the complex task of spectrum management during the critical transition to digital television. Fox therefore requests that the Commission preserve, but not expand, existing contours of Class A applicants that comply with the

²⁰ *See* 47 C.F.R. §§ 73.3572, 73.3564(e).

statutory eligibility requirements, including compliance with Part 73, and protect DTV licensees' right to maximize their service areas in accordance with the CBPA and existing Commission rules.

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I, Alvin Liu, do hereby certify that on this 22nd day of February 2000, copies of the the attached "Reply Comments of Fox Television Stations, Inc. and Fox Broadcasting Company" filed today with the FCC in MM Docket No. 00-10 were served via courier (*) and first-class mail, postage prepaid, on the following parties:

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