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March 17, 2000

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MAR 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Presentation - In the Matter of:
Establishment of a Class A Television Service
(MM Docket Nos. 00-10, 99-292; RM-9260)

Dear Ms. Salas:

This is to advise the FCC that representatives of The WB Television Network, Pappas Telecasting Companies, and Davis Television Clarksburg, L.L.C. (and its affiliated entities) made an oral presentation to the Chief, Mass Media Bureau and certain members of the Commission's staff on Wednesday, March 15, 2000. In accordance with the Commission's *Ex Parte* rules, enclosed are an original and four copies of a letter addressed to the Chief, Mass Media Bureau, which references the matters that were addressed during that meeting.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
Counsel for The WB Television Network and
Pappas Telecasting Companies

Enclosure

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March 17, 2000

BY HAND DELIVERY

Mr. Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission
The Portals II, Room 2-C347
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Presentation - In the Matter of:
Establishment of a Class A Television Service
(MM Docket Nos. 00-10, 99-292; RM-9260)

Dear Mr. Stewart:

This letter is intended to follow up on some of the issues that were discussed during an informal meeting on March 15, 2000, between you, members of your staff, and representatives of The WB Television Network, Pappas Telecasting Companies, and Davis Television Clarksburg, LLC (and its affiliated entities) (collectively, the "Parties").

The Parties recognize that, due to the mandatory timetable set forth in the Community Broadcasters Protection Act of 1999 (the "CBPA"), Class A applications must be filed within 30 days of the date the Commission adopts final rules in the above-referenced rulemaking proceeding. Additionally, those Class A applications which are "acceptable for filing" must be granted within 30 days thereafter.¹ As a result, Class A applications which are accepted for filing soon after their filing date will be granted prior to the close of the window filing period for amendments to pending NTSC proposals (*i.e.*, applications and allotment rulemaking petitions proposing new full-service

¹ 47 U.S.C. §336(f)(1)(C).

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television stations), which is to occur on July 15, 2000.² Nevertheless, the procedural timetable established by the CBPA should have no effect on the Commission's determination with respect to whether Class A LPTV applications should be required to protect pending NTSC proposals.

In the event the Commission elects to protect pending NTSC proposals from Class A LPTV applications, the Commission could award qualifying LPTV stations Class A licenses which would be subject to the amended NTSC proposals filed on or before July 15, 2000. Because those LPTV stations which are entitled to receive a Class A license are already operating, the conditional license would not involve the risk associated with constructing a new facility which might later have to be dismantled. Instead, the Class A license is an additional authorization that, under the Parties' proposal, would entitle qualifying LPTV stations to primary service status where the LPTV station does not conflict with a pending NTSC proposal.

With respect to the question concerning whether all of the pending NTSC proposals for new full-service television stations should be protected from Class A applications, the Parties believe that it would be arbitrary for the FCC to protect certain pending NTSC proposals and not others. For example, if the FCC were to protect only those pending NTSC applications which have achieved "cut-off" status, we believe this would be extremely unfair to many NTSC proponents whose proposals have been pending at the FCC for a considerable period of time, and long before the CBPA was enacted. Indeed, in the DTV proceeding (MM Docket No. 87-268), the Commission established deadlines for filing applications and allotment rulemaking petitions for new NTSC stations.³ Many NTSC proponents filed their respective applications and allotment petitions prior to those established deadlines. The fact that many of the pending NTSC proposals (including those of the Parties) have not been processed by the Commission or achieved "cut-off" status is due to no fault on the part of the various applicants or petitioners. If the Commission had elected to do so, it could have processed these pending NTSC proposals, accepted the applications for filing, and then held the applications in abeyance pending the final resolution of the DTV proceeding. Instead, the Commission chose not to process these proposals. At the same time, however, the Commission has repeatedly stated that it would seek to accommodate these pending applications and rulemaking petitions for new NTSC stations by giving the applicants and petitioners an opportunity to amend their respective proposals

² See *Public Notice*, DA 00-536 (released March 9, 2000) ("Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000").

³ The deadline for filing rulemaking petitions proposing new NTSC stations was July 26, 1996. The deadline for filing applications for new NTSC stations was September 20, 1996. See *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588, ¶¶104-105 and n. 173 (1997).

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(to the extent necessary) after the DTV Table of Allotments was adopted.⁴ The Parties believe that it would be arbitrary and capricious, and constitute an abuse of discretion, for the Commission now to take the position that those pending applications and allotment rulemaking petitions for new full-service television stations, which it elected not to process, should not be afforded protection from subsequently-filed Class A LPTV applications because they have not been "cut-off."

Furthermore, the Parties believe there is sufficient spectrum available to incorporate Class A stations into the Commission's existing regulatory framework without turning the Commission's longstanding regulatory scheme on its head and effectively depriving pending NTSC proposals of their primary service status. Due to the substantially smaller service contours of LPTV stations and the fact that they are licensed under Part 74 of the rules on the basis of interfering contours (rather than minimum distance separations), LPTV stations have substantially greater flexibility in attempting to find a replacement channel than full-power stations. It simply will be much easier for an LPTV station to find a suitable replacement channel and make minor adjustments in its technical operation than it would be for a full-power station, whose options are extremely limited due to its significantly greater coverage area. In addition, the Commission has proposed to re-define what constitutes a "major change" for LPTV stations, which also should make it easier for LPTV stations to make minor changes in their technical facilities without having to wait for a major change filing window.

Finally, although there may be concern that requiring Class A applications to protect pending NTSC proposals might subject Class A applications to an indefinite number of full-power proposals, this is not the case. There is a finite universe of pending NTSC proposals on file at the Commission. The deadlines for filing applications and allotment rulemaking petitions for new NTSC stations have long since passed, and no further proposals will be accepted. As the Commission indicated in its initial *Notice of Proposed Rulemaking* concerning the establishment of a Class A television service,⁵ the pending applications and allotment rulemaking petitions could result in no more than 250 new NTSC stations. *See Initial Notice*, ¶35. The Parties believe, however, that due to the allotment of paired digital channels, the actual number is likely to be substantially less. For example, out of the over 40 NTSC applications and allotment petitions that the Parties filed in July and September 1996,

⁴ *See, e.g., 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*, FCC 99-257, ¶41 (1998). *See also Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order*, 12 FCC Rcd 22953 (1998); *Public Notice*, DA 99-2605 (released November 22, 1999) ("Mass Media Bureau Announces Window Filing Opportunity For Certain Pending Applications and Allotment Petitions for New Analog TV Stations").

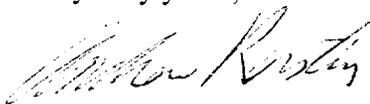
⁵ *Notice of Proposed Rule Making*, FCC 99-257 (released September 29, 1999) ("*Initial Notice*").

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at least ten of the proposed new full-power stations are no longer technically viable due to conflicting DTV allotments. Therefore, the total number of potential full-power stations that may result from the pending NTSC proposals is likely to be substantially reduced. Furthermore, the vast majority of the Parties' pending applications and allotment rulemaking petitions propose to bring new full-service television stations to markets which currently are served by no more than five or six full-power stations. Therefore, for this additional reason, there is a strong likelihood that there would be sufficient spectrum available for qualifying Class A LPTV stations in these markets, whereas there is not likely to be sufficient spectrum for new full-power stations in these markets if the Commission does not require Class A applications to protect these pending NTSC proposals.

We hope that the information contained herein is useful in resolving some of the more difficult issues raised in the Class A LPTV rulemaking proceeding. Should either you or your staff have any questions concerning these matters, please contact either Dennis Corbett, Esquire (202/416-6780), or the undersigned.

Very truly yours,



Andrew S. Kersting
Counsel for The WB Television Network and
Pappas Telecasting Companies



Dennis P. Corbett
Counsel for Davis Television Clarksburg, LLC; Davis
Television Corpus Christi, LLC; Davis Television
Duluth, LLC; Davis Television Fairmont, LLC; Davis
Television Pittsburg, LLC; Davis Television Topeka,
LLC; and Davis Television Wausau, LLC

cc: Office of the Secretary (FCC) (by hand); Mr. Thomas Power (FCC) (by hand); Mr. David Goodfriend (FCC) (by hand); Ms. Helgi Walker (FCC) (by hand); Mr. Richard Chessen (FCC) (by hand); Ms. Marsha MacBride (FCC) (by hand); Mr. Keith Larson (FCC) (by hand); Mr. Robert Ratcliffe (FCC) (by hand); Ms. Barbara Kreisman (FCC) (by hand)