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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

To: The Commission

PETITION FOR RECONSIDERATION

Bozeman Media Group, North Rocky Mountain Television, L.L.C. and Pocatello Media Group, by counsel and pursuant to Section 1.429 of the Commission's Rules, hereby respectfully requests reconsideration of certain aspects of the Commission's Report and Order ("R&O") of April 4, 2000 in the above-captioned proceeding.¹ In support whereof, the following is respectfully shown:

Discussion

The FCC Can and Should Continue to Accept Class A Applications.

The Community Broadcasters Protection Act of 1999 (the "CBPA")² provides that an LPTV station may qualify for Class A status in one of two ways. First, a station may qualify if, during the 90 days preceding enactment of the statute (i.e. August 31, 1999 through November 28, 1999): (a) the station broadcast a minimum of 18 hours per day; (b) the station broadcast an average of three hours per week of programming produced within the station's market area (or the

¹ Report and Order MM Docket No. 00-10 (In the Matter of Establishment of a Class A Television Service), FCC 00-115 (released April 4, 2000).

² Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-549 - 1501A-598 (1999), codified at 47 U.S.C. §336(f) (the "CBPA").

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market area served by a group of commonly owned stations), and (c) the station was in compliance with the Commission's requirements for LPTV stations.³ Second, a station may qualify for Class A status if the Commission determines that the public interest, convenience and necessity would be served by treating the station as a qualifying low-power television for purposes of the statute, or for other reasons determined by the FCC.⁴ In other words, even an LPTV licensee that did not meet the three-pronged statutory test, or could not meet the test within the three month time period specified in the statute, could be deemed a "qualified" licensee entitled to Class A status if for any reason the FCC determined that this would serve the public interest, convenience and necessity.

In the *R&O*, the FCC simply ignores the discretion expressly granted it by Congress, concluding that the basic purpose of the CBPA was to permit a one-time conversion of a single pool of existing LPTV licensees that met specific criteria before the statute was enacted.⁵ With this interpretation, the FCC basically closes the door on any future Class A applications, thereby forever denying the majority of LPTV licensees the benefits of Class A status.

In effect, the FCC read into the statute restrictive language that simply does not exist, and that is directly contradicted by Congress' express grant to the FCC of broad authority to fashion alternative qualifications tests for licensees seeking Class A status. This contradicts the most basic tenets of statutory interpretation,⁶ as well as common sense.

In an attempt to bolster its position, the FCC makes reference to language in the statute

³ 47 U.S.C. § 336(f).

⁴ *I.d.*

⁵ *R&O* at ¶'s 11-12.

⁶ *See Chevron U.S.A., Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837 (1984).

recognizing that since the inception of low power television, a "small number of licensees have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available."⁷ This is little more than a recognition by Congress of marketplace realities. If Congress had intended that only this select group of LPTV licensees should be entitled to seek Class A status, it would have indicated such, and not given the FCC discretion to fashion broader qualifications standards.

Both Congress and the FCC have recognized that LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide valuable local and/or niche programming to residents of specific ethnic, racial and other special interest communities, and to residents of such discrete communities within larger markets, thereby advancing the fundamental goals of diversity and localism in television broadcasting.⁸ Both Congress and the FCC also have recognized that obtaining Class A status, and the benefits associated therewith, would greatly facilitate the acquisition of capital needed by LPTV stations to continue to provide free, over-the-air programming to their communities.⁹ In light of these obvious and acknowledged benefits, it is absurd to even suggest that Congress intended to limit the benefits of Class A status only to a small number of licensees that would meet certain statutory guidelines during a three month window in 1999, or that the public interest would be served thereby.¹⁰

⁷ *R&O* at ¶ 12; CBPA § (b)(1).

⁸ *R&O* at ¶'s 1-2.

⁹ *I.d.*

¹⁰ *Bechtel Constr. v. United Bhd. of Carpenters*, 812 F. 2d 1220, 1225 (9th Cir. 1987) ("Legislative enactments should never be construed as establishing statutory schemes that are illogical, unjust or capricious").

The FCC has the discretion under the CBPA, and should use that discretion, to allow LPTV licensees to seek Class A status pursuant to the three-pronged statutory test on a going forward basis. At a minimum, this will provide incentive to all LPTV licensees to make maximum use of their facilities, and thereby promote diversity and localism on a much broader scale, which is critical given that full-power broadcasters are rapidly consolidating.

Conclusion

The full benefits of Class A status will never be recognized if the pool of potential candidates is limited to those few stations that could meet the statutory test during the three month window preceding enactment of the CBPA. The FCC should exercise the discretion afforded it by Congress and accept Class A applications on a going forward basis. This is the only way to ensure that LPTV's important role in ensuring diversity and localism in television broadcasting is fully realized.

Respectfully submitted,

**BOZEMAN MEDIA GROUP, NORTH ROCKY
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