

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

**ESTABLISHMENT OF A CLASS A
TELEVISION SERVICE**

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MM Docket No. 00-10

To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

A. Introduction.

1. The **Community Broadcasters Association** (“CBA”), the trade association of the nation’s low power television (“LPTV”) and prospective Class A television stations, hereby opposes certain of the petitions for reconsideration filed in the above-referenced proceeding.¹ As discussed below, the Petitioners have taken positions contrary to the Community Broadcasters Protection Act of 1999 (“CBPA”) and thus exceed the Commission’s authority, particularly with regard to which full power television facilities should have priority over Class A stations.

B. The Commission Must Not Expand the Group of Full Power Analog Television Stations to Which Protection Must be Afforded.

¹ The points discussed in this Opposition were made primarily by Davis Television Duluth, LLC, *et al.* (filed June 8, 2000) (“*Davis Petition*”); The WB Television Network (filed June 9, 2000) (“*WB Petition*”); and KM Communications, Inc. (filed June 9, 2000) (together referred to as “Petitioner”).

2. Petitioners attempt to exceed the limits imposed by Congress and adopted by the Commission on the group of NTSC analog stations to which protection must be afforded.² They argue that all pending applications for new full-power television stations on file as of November 29, 1999, should be given protection, and that to do otherwise would improperly give LPTV stations priority over full-power television stations. *See WB Petition* at 2; *Davis Petition* at 2. WB goes even further, making the baseless argument that LPTV stations do not offer public interest benefits commensurate with those provided by full-power stations, and therefore all pending NTSC applications should be protected.

3. These arguments not only are inconsistent with the CBPA but also flatly ignore the intent of Congress and the Commission to give LPTV stations that qualify as Class A stations primary status as television broadcasters. Contrary to WB's self-serving claims, Congress and the FCC clearly understood the significant local public service programming provided by LPTV stations in areas where broadcast service is otherwise unavailable, along with service addressing the unmet needs and interests of minority viewers. *See, e.g., Petition for Reconsideration* filed by Univision Communications, Inc. in MM Docket No. 00-10 (June 9, 2000). WB's attempt to undermine Class A stations and place them on a second tier of service is unfounded.³

² The Commission in *Establishment of a Class A Television Service Report and Order*, 15 FCC Rcd 6355 (2000) ("*Report and Order*"). The *Report and Order* followed the CBPA statutory language and required Class A applicants to protect facilities filed for in NTSC applications that were pending as of November 29, 1999, and that had completed "all processing short of grant as of that date for which the successful applicant is known." *Report and Order* at para. 44. This group includes post-auction applicants, applications proposed for grant in pending settlements, and singleton applicants cut off from further filings. *Id.*

³ Moreover, WB's claim that a majority of its pending NTSC applications would bring a first local television service to the designated communities is an over-simplification. As set forth in WB's previously filed comments, these pending television stations would be programmed as affiliates to

further promote the WB Television Network. Network affiliates provide service to either the primary city of a DMA or the entire DMA itself and do not focus their attention on the local unique needs that are served on a more efficient and targeted basis by Class A stations.

4. To force Class A stations to protect all pending applications,⁴ would impose a degree of uncertainty and spectrum inefficiency not found among other primary service providers. In fact, it can be argued that the Commission was even more generous to full power stations than Congress intended, as the statutory language indicates that protection should only be given to those television stations transmitting in analog format as of November 29, 1999. If Congress intended for all full power analog stations, either proposed or pending, to receive interference protection, it would not have used the word “transmitting.” The FCC expanded the group of full power stations deserving protection to include not only those actually operating or authorized to transmit but also those for which processing had been completed short of grant by November 29, 1999, as well as those for which the identity of the successful applicant was known. CBA has not opposed this resolution of the issue.

⁴ KM goes even further and requests protection for pending rule making petitions to amend the TV Table of Allotments that cannot be supported under the CBPA.

5. To protect pending NTSC proposals, however, is clearly unwarranted and unsupported by the statutory language. It would force Class A applicants to give protection to numerous hypothetical stations that may never operate. The result would be clearly inconsistent with the primary status afforded by the CBPA to Class A stations. It is well established that a pending applicant “by virtue of filing its application, [does not] obtain the right to have it considered under the rules then applicable”; and the Commission has on different occasions dismissed pending applications upon a change in its rules, without affording any remedy to the applicants.⁵ Far from confusing and inequitable, the current rules are the only way to provide certainty and uniformity among primary service providers, which, albeit to the dismay of Davis and WB, do include Class A stations. “Congress intended to place Class A licensees on roughly even footing with full-service licensees . . .” *Report and Order* at para. 47. The Commission may not denigrate the "primary status" accorded to Class A stations by giving full power stations greater rights against Class A stations than they have against other full power “primary status” stations.⁶

C. The FCC Correctly Allowed a Six-Month Window To File Class A Applications.

6. WB's argument that applications for Class A status were limited by statute to a 30-day, and not a six month, window is incorrect. This argument hinges on the language that the applicant "may" submit a Class A application to the Commission within 30 days of the Class A rules becoming final regulations. There can be no question that the term "may" connotes a degree of discretion. As

⁵ See e.g., *PLMRS Narrowband Corp. v. FCC*, Case No. 92-1432, D.C. Cir. (released July 16, 1999); *39 GHz Band*, 12 FCC Rcd 18600 (1997).

⁶ While WB and Davis may be frustrated by the delay they have experienced in having certain full power station applications acted upon by the FCC, that is no basis for circumventing clear statutory language just for their benefit.

clearly shown in other sections of the Act, if Congress truly wanted to limit the filing of Class A applications, it would have used the word "shall" instead of "may."⁷ Regardless of the number of Class A applicants, the Commission determined that because of the factors involved in preparing a Class A license application, especially for those filing displacement applications, a six-month window was a reasonable time frame to allow for filing. WB fails to set forth any compelling reason as to why a six-month window is not in the public interest, so the window should not be altered.

D. Conclusion

⁷ For example, the Commission abided by the statutory directive of the Act in requiring that licensees intending to seek Class A designation "shall" submit a certificate of eligibility within 60 days in its promulgation of the Class A regulations. Section 336(f)(1)(A) of the CBPA.

7. As shown herein, many of the arguments in the petitions referenced herein would directly violate the Congressional and FCC goals of recognizing the important and unique broadcast service provided by Class A stations by giving them "primary" status, on a level with other television broadcast stations. Therefore, the Commission must reject arguments that request an expansion of the group of protected full power television stations and that also attempt to limit the window in which Class A applications may be filed. To do otherwise would undermine the efforts already undertaken to allow Class A stations to continue providing their unique and local service to the public.⁸

Respectfully submitted,

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⁸ CBA has not discussed herein those arguments of petitioners for reconsideration with which it agrees, but it wishes to reiterate that the permissive language of the CBPA requires the Commission to consider public interest showings by applicants that did not meet the Class A minimum programming requirements during the three months ending November 29, 1999.

CERTIFICATE OF SERVICE

I, Donna Brown, hereby certify that on this 7th day of July, 2000, a copy of the foregoing "Opposition to Petitions for Reconsideration" has been served by first-class United States mail, postage prepaid, upon the following:

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