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VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: **MM Docket No. 00-10**

Dear Ms. Salas:

On behalf of Davis Television Duluth, LLC; Davis Television Corpus Christi, LLC; Davis Television Pittsburg, LLC; Davis Television Topeka, LLC; Davis Televison Fairmont, LLC; and Davis Television Wausau, LLC, I am transmitting herewith an original and eleven copies of their Comments on Petitions for Reconsideration in the above-referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned counsel.

Very truly yours,

Ross G. Greenberg

Ross G. Greenberg

Enclosures

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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

COMMENTS OF DAVIS TELEVISION DULUTH, LLC; DAVIS TELEVISION CORPUS CHRISTI, LLC; DAVIS TELEVISION PITTSBURG, LLC; DAVIS TELEVISION TOPEKA, LLC; DAVIS TELEVISION FAIRMONT, LLC; AND DAVIS TELEVISION WAUSAU, LLC ON PETITIONS FOR RECONSIDERATION

I. INTRODUCTION

Davis Television Duluth, LLC, applicant for a new NTSC construction permit on Channel 27 at Duluth, Minnesota; Davis Television Corpus Christi, LLC, applicant for a new NTSC construction permit on Channel 38 at Corpus Christi, Texas; Davis Television Pittsburg, LLC, applicant for a new NTSC construction permit on Channel 14 at Pittsburg, Kansas; Davis Television Topeka, LLC, applicant for a new NTSC construction permit on Channel 43 at Topeka, Kansas; Davis Television Fairmont, LLC, applicant for a new NTSC construction permit on Channel 66 at Fairmont, West Virginia; and Davis Television Wausau, LLC, permittee of a new NTSC station on Channel 55 at Wittenberg, Wisconsin (these commonly owned Davis entities collectively referred to herein as "Davis"), by their attorneys and pursuant to Section 1.429(f) of the Commission's Rules, hereby submit their comments on various petitions for

reconsideration (the "Comments") of the Commission's Report and Order, FCC 00-115, released April 4, 2000, in the above-captioned proceeding ("Report and Order").[1]

II. THE CBPA'S BEDROCK REQUIREMENT OF THREE HOURS OF LOCALLY PRODUCED PROGRAMMING SHOULD NOT BE DILUTED IN ANY WAY

In the Report and Order, the Commission noted that the Community Broadcasters Protection Act of 1999 ("CBPA") prescribes that, in order to qualify for Class A status, LPTV stations must have broadcast an average of at least three hours per week of programming produced within the "market area" served by the station during the 90 days preceding the date of enactment of the CBPA. Report and Order at ¶ 16. The Commission defined "market area" to encompass the area within a station's predicted Grade B contour, adding that "[w]ith respect to a group of commonly controlled stations, the market area will be the area within the predicted Grade B contours of any of the stations in the commonly owned group." Id. at ¶ 18.

Several petitioners have urged the Commission to further elaborate on its definition of locally produced programming and clear up ambiguities regarding the local programming requirement for Class A status. See Petition for Reconsideration of The WB Television Network ("WB Petition") at 21; Petition for Reconsideration (or Clarification) of Carolina Christian Broadcasting, Inc. ("CCB Petition") at 1-3; Petition for Reconsideration of Robert E. Kelly ("Kelley Petition") at 11-14.

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[1] Notice of the filing of petitions for reconsideration in this proceeding was published in the Federal Register on June 22, 2000 (65 Fed. Reg. 38831), and these Comments are therefore timely filed. See 47 C.F.R. § 1.429(f) (1999).

Davis agrees that the Commission's interpretation of the local programming requirement would benefit from further explanation. But Davis does not agree with some petitioners that would have the Commission implement a more liberal interpretation of the local programming requirement. See CCB Petition, Kelley Petition, Petition for Reconsideration of Univision Communications Inc. at 6-9. Davis believes that the local programming requirement is a cornerstone of Congress' licensing criteria and should not be diminished in any way.

In the CBPA, Congress stated that during the 90 days preceding the date of enactment of the CBPA, qualifying LPTV stations must have broadcast "an average of at least 3 hours per week of programming *that was produced within the market area served by such station*, or *the market area* served by a group of commonly controlled low-power stations that carry *common local programming produced within the market area served by such group*." 47 U.S.C. § 336(f)(2)(A)(i)(II) (emphasis added). Davis believes that Congress' language makes it clear that the local programming requirement is satisfied only by programming *that is local in nature* and is produced within the contour of the LPTV station or the contours of a commonly controlled group of LPTV stations *within the same market*. Congress could not have meant that programming produced in one locality and retransmitted by a commonly owned station in an entirely different locality would satisfy the local programming requirement for the retransmitting station. Under such an interpretation, local programming produced by an LPTV licensee in one part of the country theoretically could satisfy the local programming requirement for a co-owned LPTV station on the other side of the country if merely retransmitted by that station. This interpretation is entirely inconsistent with Congress' goal of rewarding LPTV stations that have

produced and broadcast *local* programming of interest to the viewers located within their communities.

Additionally, the Commission should specify that in order to satisfy the local programming condition, the programming must be specifically addressed to the interests of the LPTV station's local community. If, for example, an LPTV station merely replicates programming that has been produced by a commonly owned LPTV station in the same large Designated Market Area ("DMA") but addresses the interests only of the originating station's community, such programming by definition cannot be "common *local* programming" and cannot satisfy Congress' local programming requirement. There must be a commonality of interests for such programming to satisfy the local programming requirement, and eligible programming must address the interests and needs of *local* residents to be meaningful. DMA's are often too large and encompass too many different cities and localities to be considered a single cohesive market for purposes of the analysis of issues relating to LPTV/Class A station local program production. See Report and Order at ¶ 19 ("It does not appear appropriate, therefore, to consider programming produced anywhere in the DMA to be 'locally produced' for purposes of Class A stations' eligibility.") and n.42 ("In some cases, different communities within a DMA might be served by different Class A stations. The LPTV service was tailored to meet the needs of local communities, as opposed to such wider areas as would be covered in a DMA."). Merely because programming is produced by one LPTV station within a DMA does not mean that the programming is of concern to the local viewers of another commonly owned station in a different city within that DMA. For the same reasons, programming produced by one

LPTV station and retransmitted by LPTV stations around the country as part of a satellite-delivered network cannot be deemed "locally produced" programming for any station other than the single station which actually produces it.

Similarly, the Commission should specify that eligible programming common to multiple stations must be produced by an *LPTV station* within the commonly controlled group of LPTV stations within the same market. LPTV stations that are merely acting as translators retransmitting 100% of the programming of a commonly controlled full power station, for example, should not qualify. In the CBPA, Congress specified that eligible local programming must be produced within the market area served by a group of "commonly controlled *low-power stations* that carry common local programming." The Commission should explicitly make this point.

Finally, the Commission should clarify that its decision to grandfather all LPTV main studios now in existence does not alter the strict requirement that programming produced at such grandfathered main studios must have been produced for that LPTV station and must address *local* interests in order to count toward the three-hour Class A eligibility requirement. The fact that a station's grandfathered main studio is located outside the "market area" defined by the Commission does not mean that the locally produced programming requirement should be otherwise relaxed. Such a clarification would be particularly helpful in light of the fact that LPTV stations were not previously required to maintain main studios and there may be uncertainties about what constitutes a grandfathered main studio.

The Commission's lack of clarity in setting forth the local programming requirements has resulted in the potential for a significant number of improperly filed certifications of eligibility for Class A status. These ambiguities, combined with the Commission's failure to require any backup documentation whatsoever in support of filed certificates of eligibility, continues to bedevil the Class A licensing procedure. Accordingly, the Commission should clarify the local programming requirement, implementing it as narrowly as Congress clearly intended.

III. THE COMMISSION SHOULD STRICTLY ENFORCE THE REQUIREMENT THAT ALL CLASS A STATIONS COMPLY WITH THE COMMISSION'S OPERATING RULES FOR FULL POWER STATIONS

Numerous petitioners have asked the Commission to relax one or another of the Commission's operating rules for full power stations once an LPTV station submits its application for Class A status. However, Congress has *explicitly stated* that qualifying LPTV stations *must be in compliance with the Commission's operating rules for full power stations from and after the date of application for a Class A license*. See 47 U.S.C. § 336(f)(2)(A)(ii). Congress did not give the Commission the authority to relax any rules applicable to full power stations. It is ironic that LPTV licensees want protection *vis-a-vis* full power stations, even at the potential expense of full-power NTSC applicants, but do not seem to want to shoulder the regulatory burdens that come with primary status. The Commission should not allow any Class A station to avoid responsibilities mandated by Congress.

IV. DAVIS AGREES WITH THE WB THAT THE STATUTORY PERIOD WITHIN WHICH CLASS A LICENSE APPLICATIONS MUST BE FILED IS 30 DAYS AND SUPPORTS THE WB'S PROPOSED METHOD FOR RESOLVING CONFLICTS BETWEEN PENDING NTSC PROPOSALS AND CLASS A APPLICATIONS

In its petition for reconsideration, The WB Television Network (the "WB") maintains that the Commission's decision to allow LPTV licensees to file Class A license applications for a period of up to six months after the effective date of the new rules is inconsistent with the 30-day period set forth in Section 336(f)(1)(C) of the CBPA and violates basic principles of statutory construction. See WB Petition at 10-16. Davis supports the WB's assertion. The decision to provide potential Class A stations six months to file effectively wrote the 30-day filing period out of the statute.

Also in its petition, the WB urges the Commission to adopt a procedure to resolve conflicts between pending NTSC proposals and Class A applications similar to that used in FM allotment cases in the event the Commission does not reconsider its decision not to require Class A applications to protect all pending NTSC applications. WB Petition at 16-19. Davis supports the WB's suggestion and believes that in those instances where there is a conflict between a Class A application or station and a pending NTSC proposal and the parties are unable to enter into an interference or relocation agreement, the Commission should permit the NTSC proponent to obligate the Class A applicant or station to move to a suitable alternative channel under the conditions set forth in the WB Petition.

IV. CONCLUSION

For the reasons set forth above, Davis urges the Commission to clarify its Class A rules in a manner consistent with these Comments.

Respectfully submitted,

DAVIS TELEVISION DULUTH, LLC
DAVIS TELEVISION CORPUS CHRISTI, LLC
DAVIS TELEVISION PITTSBURG, LLC
DAVIS TELEVISION TOPEKA, LLC
DAVIS TELEVISION FAIRMONT, LLC
DAVIS TELEVISION WAUSAU, LLC

By: Dennis P. Corbett

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July 7, 2000

Their Attorneys

139856

CERTIFICATE OF SERVICE

I, Yaiza E. Garabito, do hereby certify that a true copy of the foregoing, Comments of Davis Television Duluth, LLC; Davis Television Corpus Christi, LLC; Davis Television Pittsburg, LLC; Davis Television Topeka, LLC; Davis Television Fairmont, LLC; and Davis Television Wausau, LLC on Petitions for Reconsideration, was mailed by first-class mail, postage prepaid, this 7th day of July, 2000, to the following:

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