Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Over-the-Air Broadcast	)	**MB Docket No. 04-210**
Television Viewers	)	

To: The Secretary, for forwarding to Chief, Policy Division, Media Bureau

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association ("CBA") hereby files these Comments in response to the Commission's Public Notice, DA 04-1497, released May 27, 2004, seeking information on households that have only analog television receivers and do not subscribe to a pay delivery service such as cable television ("cable") or broadcast satellite ("DBS"). CBA is the trade association of the nation's Class A and Low Power Television ("LPTV") stations and represents the interests of these stations in legislative, judicial, and administrative proceedings.

2. The intent of this proceeding is to assist the Commission in determining when the distribution of digital television signals will reach the required 85% statutory threshold before analog television service may be terminated.[1] The Commission appears to assume that any household that subscribes to cable or DBS will have sufficient access to digital signals that it may counted as digital-capable, even if the household has no receiver capable of receiving digital signals over the air. There is a fundamental assumption underlying that approach that all

[1] *See* Sec. 309(j)(14)(B) of the Communications Act, 47 USC Sec. 309(j)(14)(B).

broadcast signals are delivered by cable and DBS -- an assumption that, as discussed *infra*, is invalid in a significant respect.[2]

3. There is no law or regulation that requires cable carriage of any Class A or LPTV station, except in communities with a population of under 35,000 persons, outside of the top 160 Metropolitan Statistical Areas, and in counties that have no full power television station.[3] There is also no law or regulation that requires any DBS system to carry any Class A or LPTV station at all. In fact, the vast majority of Class A and LPTV stations do not enjoy cable carriage, and only a tiny handful are carried on DBS. There are some 2,738 licensed Class A and LPTV stations – or 57% more than the total of 1744 commercial and noncommercial full power television stations.[4] Thus the fact that a household may subscribe to cable or DBS does not all enable or facilitate reception of 61% of the nation's television stations.[5] When all of those stations begin digital operation, as is contemplated in the relatively near future,[6] access to their digital signals will require viewers to have over-the-air DTV reception capability. And when

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[2] The Commission also assumes that cable systems will carry digital television broadcast signals and will convert those signals to a format that may be viewed on analog receivers. However, to date, the Commission has not ordered cable systems to carry any digital signals or to convert any digital signals to analog format, except in the case of those very few television broadcast stations that operate on one digital channel only, with no corresponding analog channel.

[3] *See* Section 614(c) and (h)(2) of the Communications Act, 47 USC Sec. 534(c) and (h)(2).

[4] *See* Public Notice released April 27, 2004, with statistics as of March 31, 2004.

[5] In fact, a subscription to cable or DBS often impairs reception of Class A and LPTV stations, because the purveyors of those technologies encourage the dismantling of over-the-air receiving antennas. In addition to Class A and LPTV, there are 4,737 TV translators, many, if not most, of which exist for the purpose of reaching households that do not subscribe to cable or DBS.

[6] The Commission is currently considering DTV transitional rules for Class A and LPTV stations in MB Docket No. 03-185.

Class A and LPTV stations are required to terminate analog service, most of them will lose access to all their viewers except those who have digital receivers or over-the-air converters.[7] A forced premature termination of analog service would clearly be fatal to these stations.

4. It should be clear why Class A and LPTV stations view with considerable trepidation the possibility that they will be required to terminate analog service just because full power DTV signals are delivered and/or converted by cable and DBS. The pay delivery services are irrelevant to most Class A and LPTV stations and cannot reasonably be used as a basis for terminating over-the-air analog service when they deliver less than 40% of the nation's television stations. Rather, a finding of digital reception penetration must be based on over-the-air reception by either digital receivers or analog receivers with digital converters that are obtained elsewhere than through cable or DBS service providers. The number of households that have digital reception capability must also be based on those that can receive all local television signals, not just the signals carried by the pay service providers.[8]

5. Class A television is the only broadcast service that has a legal requirement to broadcast local programming -- an average of three hours per week.[9] Class A and LPTV stations for the most part survive and compete for viewers based on providing programming oriented toward local interests. This industry has the greatest concentration of local owners and minority

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[7] For this reason, CBA has observed comments in MB Docket No. 03-185 that Class A and LPTV stations must have temporary access to second channels for digital operation, just as full power stations have had for the past several years, if they are to survive the transition.

[8] Section 309(j)(14)(B)(iii)(II) of the Communications Act, 47 USC Sec. 309(j)(14)(B)(iii)(II), which provides for extending the end of the transition, refers to capability to receive the digital "television signals" in a market, not "some" of the DTV signals.

[9] *See* Secs. 336(f)(1)(A)(ii) and 336(f)(2)(A)(i)(II) of the Communications Act, 47 USC Secs. 336(f)(1)(A)(ii) and 336(f)(2)(A)(i)(II).

and female owners of any broadcast medium. The Commission has recently indicated a renewed interest in and emphasis on the virtues of local programming.[10] To pursue local service with one hand and then to disregard accessibility to the greatest source of that programming with the other would be inconsistent, if not irrational, policy-making.

6. Accordingly, CBA urges that the Commission cannot reasonably, or consistent with Section 309(j)(14) of the Communications Act, rely on any service that does not deliver all local broadcast signals in determining when digital reception penetration has reached the threshold required to shut down analog broadcasting. To rely on such services would also be contrary to the public interest because it would disregard the greatest concentration of valuable local service and local ownership in the television industry.

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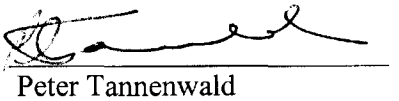
Respectfully submitted,



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[10] *See* MB Docket No. 04-233, now in progress.

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