

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 05-255
Competition in the Market for the)	
Delivery of Video Programming)	
)	
The Commission's Cable Horizontal and)	MM Docket No. 92-264
Vertical Ownership Limits)	

To: The Commission

REPLY COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association ("CBA") hereby submits these Reply Comments in the above-captioned dockets. CBA is the trade association of the nation's Class A and Low Power Television stations. CBA urges the Commission to evaluate the 70% cable penetration test very carefully, because cable regulation has been ineffective in some important respects, and there would be room for substantial improvement in the effectiveness of the regulatory structure were the Commission's authority strengthened pursuant to Section 612(g) of the Communications Act.

2. CBA is particularly concerned about the fact that the cable television leased access framework is essentially dysfunctional. It is not a viable approach to cable distribution for Class A or Low Power TV ("LPTV") stations that do not have must-carry rights or for many other entities for whose benefit the leased access concept was created by Congress, because

the rates are simply out of reach of most interested parties.¹ That is a simple fact, and it has resulted in failure to achieve the diversity that was a critical basic objective of Congress. In this regard, CBA wishes to reinforce the leased access points made in the initial comments of the Association of Independent and Video Filmmakers (“AIVF”) *et al.* Even though the Commission’s leased access rules were upheld in a court appeal,² that case does not stand in the way of improvements in the leased access rules, because the decision relied on deferral to the Commission’s expertise, even though the Commission adopted rules that were focused almost entirely on the financial welfare of cable systems at the expense of the expressed intent of Congress to diversify programming voices on cable systems. Nothing in the court decision limited the Commission’s authority to modify its regulations in the future. Were a 70% finding to be made under Section 612(g), the Commission could take a broader view of leased access and hopefully would better fulfill the complete intent of Congress by focusing on making the system functional instead of just an empty theory on paper.

3. Other regulatory efforts have produced strange results because the Commission seems to feel that its hands are tied by statute. One example is that the Commission permits only full power television stations to pay for receiving equipment at a cable head-end to

¹ For example, one cable operator in New Jersey quoted to a local Class A television station that had no must-carry rights a full-time channel lease rate of \$203,760 per year to reach only about 43,500 households, which are only half the households in the county, let alone the full DMA. The station’s annual revenues are only about double the access rate quote; so in effect, the leased access charge would be 50% of the station’s revenue and would bankrupt the station on the spot. The cable company quoted this rate even though the station produced a daily newscast with local material not available elsewhere that would be attractive to subscribers. The cable company claimed that its prohibitive quote was less than 20% of the maximum allowable rate under the Commission’s Rules, which is dramatic evidence of how unworkable the regulatory structure is in real life.

² *ValueVision International, Inc. v. FCC*, 149 F.3d 1204 (DC Cir. 1998).

improve the quality of an over-the-air broadcast signal; but Class A and LPTV stations may not do the same, even though their signals are weaker and are more likely to need sophisticated receiving equipment to qualify for mandatory carriage.³ Were the Commission's authority to be expanded under Section 612(g), perhaps the Commission would take a broader view of practicalities and would make the regulatory remedy available to those who need it the most instead of only those who need it the least.

4. There must be no mistake about it -- cable television systems are the dominant means of television signal distribution. Competitors do exist, but cable distribution remains a health *vs.* sickness, if not a life-or-death, proposition for virtually all television broadcasters. Notwithstanding competition from broadcast satellites, no other distribution system is yet a serious substitute for wired cable from the point of view of video program distributors, and problems with access to cable remain the principal cause of the demise of local television broadcasting – where Class A and LPTV stations are among the most avid service providers.⁴ The Commission owes it to the public, the pursuit of whose interest is the fundamental guidepost of the Communications Act, to ascertain all the facts about cable penetration and to exercise its authority under Section 612(g) if the facts reveal that the 70% test has in fact been met.

5. Moreover, all wired systems that deliver broadcast video signals, not just “incumbent” cable operators, should be included in the calculation, because from the point of

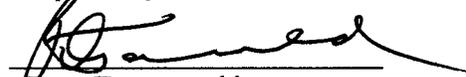
³ See Section 614(h)(1)(B)(3) of the Communications Act. CBA does not agree with the Commission's interpretation of the statute, but the interpretation is well-entrenched in case law.

⁴ Class A stations are the only broadcast stations required by law to provide a minimum amount of local programming. See Sec. 336(f)(2)(A)(i)(II) of the Communications Act.

view of the consuming public, a wire is a wire is a wire. If it walks like a cable system and talks like a cable system, it must be counted as a cable system for purposes of determining penetration, regardless of whether the Commission may or may choose to make distinctions when applying other areas of regulation.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Mary Jane Thomson, do hereby certify that I have, this 21st day of April, 2006, caused a copy of the foregoing "Reply Comments of the Community Broadcasters Association" to be sent by first class United States Mail, postage prepaid, to the following:

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Mary Jane Thomson