

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Promoting Diversification of Ownership)	MB Docket No. 07-294
In the Broadcasting Services)	
)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules Adopted)	
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review – Review of)	MB Docket No. 02-277
the Commission’s Broadcast Ownership Rules)	
and Other Rules Adopted Pursuant to Section)	
202 of the Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in)	
Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Ways to Further Section 257 Mandate and To)	MB Docket No. 04-228
Build on Earlier Studies)	

To: The Commission

REPLY COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association (CBA) hereby submits its Reply Comments in this proceeding. CBA is the national association of the nation’s Class A and Low Power Television (LPTV) stations and participates in administrative, judicial, and legislative proceedings to inform governmental officials of the needs and viewpoints of its industry.

2. CBA's initial comments discussed the Commission's authority to enable Class A televisions to achieve must-carry status on cable television systems. Predictably, representatives of the cable television industry howled at the prospect of having to carry stations operated by locally owned small businesses that provide locally-based diverse programming not available on full power stations. You name the argument -- they threw it into the pot.

7. We already carry Class A stations where their programming provides "value," said the National Cable Television Association (NCTA).¹ Ask commenters ZGS Communications Group, Inc., Paul Engle, and Barbara Ciric about that. Their stories of being shut out of cable, or shunted off to a digital tier that does not reach all subscribers, notwithstanding exceptional local service, speak for themselves.² Full power stations provide sufficient local programming, says Cablevision Systems, Inc.³ If full power stations provide sufficient local material, why did Congress, when enacting the Community Broadcasters Protection Act of 1999, bother to impose a local program content requirement on Class A stations? Full power stations focus their service on the core cities of major markets. Class A stations focus their local service on their home communities no matter what the size. The interest of television viewers in local service is not confined to large cities. All of our nation's citizens should be able to enjoy programming that is local to them rather than local to someone else down the road.

¹ NCTA Comments at p. 3.

² Cablevision Systems Corp. notes that it carries W25AW (dba WZBN-TV), the only local television station licensed to the capital of the State of New Jersey, a state that has been short-changed throughout the history of television in terms of local service. Without detracting from the credit Cablevision deserves for carrying W25AW, CBA notes that the station is carried full-time only in Hamilton Township, a small community. W25AW does not enjoy full-time carriage on the cable system that serves Trenton, its community of license.

³ Cablevision comments at p. 2.

8. There is no evidence that the economic health of local broadcasting depends on Class A cable carriage, continues Cablevision.⁴ *Au contraire*, any television broadcaster -- full power or Class A -- will tell you. ZGS Group, Paul Engle, Barbara Ciric, and Paul Knies have more than adequately demonstrated that cable carriage is the difference between breathing fresh air and hobbling around trying to keep a noose from tightening around your neck.⁵

9. We face terrible competition, the cable operators complain. Telephone-company operated wired systems and satellite systems are flogging the daylight out of us. Please keep us free from any new regulatory burdens so that we can compete. An industry that still controls access to some 65% of the nation's video households cannot be heard to complain if someone else thinks that video distribution is a good business. If competition is making inroads against a service that is as entrenched as incumbent cable, that must mean that the competition is offering a better product. It is not a problem that warrants government intervention. Carriage of broadcast stations is not a new concept or a new type of regulation. Allowing Class A stations to earn carriage rights by qualifying as full power stations is only an adjustment of an existing must-carry regulatory scheme that needs adjusting to ensure that the public is well-served with locally based voices and program content.

10. The next argument is that carriage of Class A stations will occupy bandwidth and so impair the roll-out of high definition television and advanced services. Venture Technologies Group demonstrated in its comments that the number of Class A stations that are likely to qualify

⁴ Cablevision Comments at p. 13.

⁵ The Commission knows as much. As CBA noted in its initial comments, FCC Chairman Martin, addressing a Hispanic technology summit, recently stated that "as the Courts have recognized, cable carriage is necessary for broadcast channels to survive. Today, there simply is not an economic model by which a broadcaster can support a free programming stream that reaches only over-the-air households." CBA Comments at par. 13.

for must-carry status is quite small. Moreover, carriage of full power stations also occupies bandwidth and has the same impact. This argument basically attacks the public policy value of any mandatory cable carriage. CBA suggests two possible responses. One is to abolish all must-carry regulation -- something that Congress must do. The cable industry might welcome that development, but it could lead to cable carriage of only the largest network affiliates and the demise of all small business participation in the television industry -- exactly the opposite of the diversity objective underlying this proceeding. The other is to allow carriage decisions to be made by those who best understand the need of the local audience; in other words, abolish federal carriage rules, and return the power to regulate carriage to local franchise authorities. The chances of the cable industry endorsing that proposal are likely to be on the thin side, even though in truth the proposal would probably do more to promote localism than almost any other proposal the Commission is currently entertaining.

11. The argument about bandwidth scarcity rings more and more hollow as cable companies migrate to compressed all digital service and as they continue to add new non-broadcast channel services. The bandwidth is there when they want it to be there. It is unlikely that they would welcome a rule that required a showing of which local broadcast services are being excluded before adding any new non-broadcast channel, even if the regulation were limited to analog cable tiers.⁶ But if the cable industry does not want to have an open public discussion of how they decide which channels to carry and which not to carry, then they should not be heard to complain that carriage of channels they do not want to carry will impair all kinds

⁶ Forbidding or curtailing tying practices, where highly popular cable channels will not sell their content unless the buyer also takes additional less popular channels, would not hurt either. The Commission is considering the tying problem in another proceeding.

of public interest objectives while carriage of channels they do want to carry will not have the same impact.

12. Finally, cable commenters claim infringement of their constitutional rights -- free speech impairment under the First Amendment and confiscation of property under the Fifth. These arguments are simply frontal attacks on Supreme Court law established in the *Turner* cases they cite. ZGS Communications Group argued just as forcefully that the *Turner* cases justify providing for Class A must-carry. How you come out depends on whether you think that the *Turner* cases teetered on a razor edge and can be overthrown with a wisp of a breath or firmly established the legal underpinning for ensuring that broadcast voices reach cable subscribers. If the cable industry wants to re-open the *Turner* cases, it is always free to do so; but the prospect of carriage of a handful of Class A stations is a rather thin excuse for it.

13. The purpose of this proceeding is to promote localism. Nothing that cable interests have argued advances the cause of localism at all,⁷ and they certainly do not volunteer to subject themselves to a requirement that they come up with their own locally produced programming the way Class A stations must do by law.⁸ The Class A television industry is trying to solve a problem, by suggesting a completely lawful way to enable Class A stations to acquire the “full

⁷ No matter how many niche and specialty channels that cable companies argue they carry to promote diversity, these channels are almost always distributed nationwide and do not advance the cause of localism that is at the heart of this proceeding.

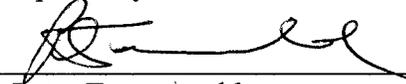
⁸ PEG and leased access channels do not count in the cable industry’s favor, because they represent carriage of the content of others to which the cable company has no obligation to contribute, other than perhaps providing studio or production facilities if required by their local franchise.

power” label that brings them squarely within the must-carry provisions of Section 614 of the Communications Act.⁹

14. CBA asks the Commission not to lose focus on its primary objectives in this proceeding and to move forward toward achievement of those objectives without flinching before legal and political fusillades fired by those who do not have a direct economic incentive to help the Commission to achieve the desired end result. The public interest, convenience, and necessity beacon that illuminates all of the Communications Act demands that the Commission look out for the needs and interests of television viewers first and foremost and that it do so in a realistic manner that can produce concrete results for those viewers.

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th St., 11th Floor
Arlington, VA 22209-3801
Tel. 703-812-0404
Fax 703-812-0486

Respectfully submitted,



Peter Tannenwald

Counsel for the Community
Broadcasters Association

August 29, 2008

Amy Brown, Secretary and Executive Director
Community Broadcasters Assn.
3605 Sandy Plains Rd.
Marietta, GA 30066
800-215-7655

⁹ CBA expects the cable industry to take aim at its legal analysis in their reply comments, but CBA maintains that if the question is the one asked in this proceeding -- whether the Commission has the *authority* to create a pathway for Class A stations to achieve must-carry status -- that question must be answered in the affirmative.