Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Promoting Diversification of Ownership in the Broadcasting Services	)))))	MB Docket No. 07-294

REPLY COMMENTS OF CABLEVISION SYSTEMS CORP.

Cablevision Systems Corp. ("Cablevision") respectfully submits these reply comments in the Federal Communications Commission's ("FCC's" or "Commission's") proceeding regarding whether the Commission has the authority to require cable carriage of Class A low-power television stations.[1/] The Commission's lack of statutory authority to award must-carry rights to Class A low-power stations or to endow Class A low-power stations with must-carry rights by reclassifying them as full-power stations is well explained in comments of several parties and need not be repeated here.[2/] Some commenters claim, however, that the Commission could choose to qualify Class A stations as full-power broadcasters entitled to must-carry rights by listing them in the Table of Allotments (thus assigning them a community) and restating the permissible range of minimum and maximum power levels for full-power stations because the maximum allowable broadcast power level for Class A stations may exceed the minimum power

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1/ *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd. 5922, ¶ 99 (2008) ("*Third FNPRM*").

2/ *See* Cablevision Systems Corp. ("Cablevision") Comments at 3-5; National Cable & Telecommunications Association ("NCTA") Comments at 3-7; Time Warner Cable Inc. ("Time Warner") Comments at 8-10.

level for full-power stations.[3/] These claims are unconvincing and should be ignored as irrelevant to this proceeding.

ARGUMENT

The comments establish the clear evidence that Congress, in creating the Class A service, intended Class A stations to remain classified as low power television ("LPTV") stations, and that any Commission action to change this intended result is impermissible.[4/] The Community Broadcasters Association, however, nonetheless suggests that because "the minimum power level for a 'full power' TV station is only 100 watts . . . any Class A television station operating at the maximum power for its class could qualify as a 'full power' station if the FCC classified it as full power and listed its channel in the TV Table of Allotments."[5/] Similarly, K-Licensee, Inc. suggests that because Class A power levels "in fact overlap with the full power analog television station [power] limitations[,] . . . for definitional purposes, a Class A station operating at maximum power could be classified as a full power station."[6/] These claims appear based on the simplistic notion that regulatory treatment of certain stations as Class A low power stations while other stations are regulated as full power stations is based purely upon the level of power used by those stations to broadcast and must be rejected.

The minimum power levels for full power stations were not established by the FCC simply to differentiate those stations from LPTV stations. Indeed, the minimum power requirement for full power analog broadcasters was in existence long before the 1982 creation of

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3/ Comments of Community Broadcasters Association at 3-5; Comments of K-Licensee at 3-4.

4/ Cablevision Comments at 4-5; Time Warner Comments at 9.

5/ Community Broadcasters Association ("CBA") Comments at 5.

6/ K-Licensee, Inc. Comments at 3-4.

the LPTV service by the FCC.[7/] When establishing a minimum power level of 50 kW for full power digital television stations, the FCC explained that it did so because it found that power level "will ensure that stations have a sufficient service area to compete effectively."[8/] In contrast, Class A stations and other LPTV stations were classified as low power in order to *contain* their service area -- as part of a proceeding that involved a "judicious balancing of competing concerns, for spectrum, for broadcasting licenses, [and] for overall maintenance of a healthy competitive telecommunications environment."[9/] CBA's proposal would directly contradict those goals. And while CBA and K-Licensee complain that mandatory cable carriage is important to the economic viability of Class A low power stations,[10/] those licensees knew the limited nature of the broadcast license they were obtaining when they applied for their license and formed their business plans.

In any case, any overlap in allowable power levels between Class A LPTV stations and full power stations exists only in the analog service and will be irrelevant after February 17, 2009, when all full power stations are required to broadcast solely in digital.[11/] Maximum power levels set for digital Class A stations are 300 watts for VHF channels and 15 kW for UHF

7/ *Compare* 47 C.F.R. § 73.614 (1981) *with Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications Systems*, Report and Order, 51 R.R. 2d 476 (1982) ("*LPTV Order*") (establishing the LPTV service).

8/ *Advanced Television Systems and Their Impact upon the Existing Broadcast Service*, Sixth Report and Order, 12 FCC Rcd. 14588, ¶ 30 (1997) ("*DTV Order*").

9/ *LPTV Order* ¶ 115.

10/ CBA at 5-6; K-Licensee at 4.

11/ Deficit Reduction Act of 2005, Pub. L. No. 109-171, Title III, §§ 3002(a), 3003, 3004, 120 Stat. 21, 22 ("A full power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009.").

channels,[12/] while the minimum for a full power digital station is 50 kW,[13/] so there is no power level overlap between Class A low power stations and full power stations in digital service.[14/]

Moreover, there are significant differences in regulatory requirements and responsibilities that apply to Class A low power stations and full power stations beyond the power level at which they broadcast and whether they are afforded must-carry rights.[15/] It is not within the framework of the FCC's regulatory structure for a low power station to become a full power station – with all the rights, privileges, obligations, and responsibilities that entails – simply by broadcasting at a certain power level. For example, full power stations need to take into consideration the programming interests and needs of a much broader community than do LPTV stations. Any such change in regulatory category would require taking into account all of the obligations and responsibilities of full power broadcasting that the licensee would need to assume, not simply whether must-carry rights will be afforded. And while CBA appears to acknowledge this in passing, K-Licensee appears interesting in obtaining full-power status "for definitional purposes only."[16/] Such a result is impermissible.

12/ 47 C.F.R. § 73.6007 (setting power limits for Class A stations as the same as those for LPTV stations expressed in 47 C.F.R. § 74.735).

13/ *DTV Order* ¶ 30.

14/ While LPTV stations may temporarily continue analog broadcast after February 17, 2009, *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd. 19331, ¶ 13 (2004), and therefore may continue to broadcast an analog signal at up to 150 kW for UHF channels 14-69, 47 C.F.R. § 73.6007, after the February 2009 date, comparison of the maximum analog signal strength for LPTV to the digital signal minimum for full power stations would be specious because of the differing characteristics of analog and digital signals.

15/ *See* 47 C.F.R. § 73.6026 (enumerating a limited number of broadcast regulations that apply to Class A stations, rather than applying all broadcast regulations to Class A stations).

16/ CBA at 5; K-Licensee at 4.

Finally, suggestions that the Commission could redefine Class A stations as full power and then simply "expand[ ] the Table of Allotments to include the community of license of any Class A station seeking carriage rights"[17/] present an extremely simplistic view of the Commission regulatory structure for broadcast stations. The Table of Allotments is a carefully calibrated configuration, fine tuned by the Commission over many years to take into account competing needs of consumers, communities, and broadcasters throughout the nation. Wholesale addition of large numbers of Class A stations into the Table of Allotments could be wildly disruptive.[18/] Any addition to the Table of Allotments would require a separate rulemaking process during which stations currently on the Table have an opportunity to present their views and concerns, interference potential is analyzed, and potential new licensees have an opportunity to compete for the spectrum. And as explained in the comments of Cablevision and others, extending such an opportunity to Class A low power station licensees is impermissible in any event.

17/ K-Licensee at 4.

18/ Creation of a subclass of "hyper-local" Class A stations that would be afforded must-carry rights, Diversity and Competition Supporters Comments at 23, would not be significantly less disruptive. Requiring cable operators to carry such stations on the basis of their content would almost certainly fail the strict scrutiny analysis that would be required in any First Amendment review of such a requirement. *See* Time Warner Comments at 11-14.

CONCLUSION

As established by commenters in this proceeding, the Commission has no authority to and should not grant Class A low-power television stations must-carry rights.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I, Ernest C. Cooper, hereby certify that on this 29th day of August 2008, the foregoing Reply Comments of Cablevision Systems Corp., was filed electronically through the FCC's Electronic Comments Filing System (ECFS) and copies were served on the following as indicated:

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