

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Possible Revision or Elimination of) **CB Docket No. 08-21**
Rules Under the Regulatory)
Flexibility Act)

To: The Commission

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association (CBA) hereby submits these Comments in response to the Commission's Public Notice, DA 08-157, released December 18, 2009. CBA is the trade association of the nation's Class A and Low Power Television (LPTV) stations. Virtually all Class A and LPTV stations are small business concerns under the Small Business Act¹ and thus are affected by this proceeding.

2. Last week, representatives of CBA met with all three Commissioners and the Media Bureau Staff to present the results of a survey demonstrating that an exceptionally high percentage of minority group members and women hold significant ownership positions in Class A and LPTV stations. In addition, hands-on operation by owners and local programming are widespread and exceed what is found at many full power television stations. CBA also explained that the Class A and LPTV industries are seriously and immediately threatened as a result of a being left out of governmental regulatory initiatives over the years, with the threat exacerbated by the worldwide economic downturn. CBA asked the Commission to take

¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. See 15 USC §632.

immediate steps to provide more access to viewers by Class A and LPTV stations and more options and flexibility for those stations that cannot succeed as broadcast operators because of exclusion from multichannel video program distribution (MVPD) systems.

3. A copy of the issues sheet presented by CBA is attached. The issues raised by CBA implicate the following regulations posted for consideration in this proceeding:

§73.682(d) – TV Transmission Standards

4. CBA submits that it is not necessary to continue to make the ATSC digital television standard mandatory for all television broadcasters. The standard is certainly useful as a guideline, so that consumers can expect some uniformity in the signals they receive, and manufacturers can produce equipment that is compatible with most television stations. Nevertheless, the standard also has a stifling effect on, and thwarts innovation by, Class A and LPTV stations that do not have access to MVPD systems and thus cannot reach the majority of viewers who rely on the ATSC standard. Some of those stations wish to experiment with other technical standards that will enable them to provide new and innovative broadband services, both fixed and mobile, to the public, taking advantage of their favorable position in the spectrum and their ability to cover a wider area than wi-fi, wi-max, or “White Spaces” systems will be able to cover. CBA requests that the ATSC standard be made optional for Class A and LPTV stations and that the Commission permit those stations to vary from the standard if a showing is made of no additional interference to other stations.

§§74.705(e), 74.706, and 74.707(e) – LPTV Interference Protection

5. Regulations protecting stations from interference are obviously important and useful. However, the application of the Longley-Rice interference prediction method in the above-referenced rule sections is unduly restrictive against LPTV stations by confining them to a

“simple” or “stringent” emission mask and not allowing use of the emission mask used by full power television stations. The Commission is urged to review the comments of Renard Communications Corp., in MB Docket No. 08-253, filed January 12, 2009, explaining why the interference protection rules, as currently applied, unnecessarily restrict the ability of LPTV stations to operate on digital channels first-adjacent to full power digital stations. The restriction makes it more difficult for LPTV stations to participate in the digital television transition – an activity that has a very high profile and level of importance to both Congress and the Commission. Thus the interference rules, or policies applying those rules, should be revised to allow LPTV stations to use the full power emission mask.

**§§76.970(h), (i) and 76.971(h) – Commercial Leased Access Rates
and Terms and Conditions**

6. The Class A-LPTV survey presented to the Commission by CBA last week showed that only 38% of responding Class A and LPTV stations enjoy any cable television carriage at all. More detailed data show that only 6% of stations are on cable by means of the leased access rules. It is thus apparent, as CBA has stressed repeatedly over the years, that the leased access rules do not fulfill the purpose of Congress to increase diversity of voices on cable. CBA is aware of the pending judicial appellate litigation over the Commission’s most recent amendment to the leased access rules and is participating in that litigation.² CBA urges the Commission to defend its rules vigorously in the appeal and not to give ground to the cable industry. The leased access rules have been a failure since their inception, and this failure needs to be remedied.

² *United Church of Christ, Office of Communication, Inc. v. FCC*, Case Nos. 08-3245, 08-3369, and 08-3370, U.S. Court of Appeals for the 6th Circuit.

Conclusion

7. CBA urges the Commission to review all of its regulations carefully, including those at issue in this proceeding, to eliminate roadblocks that impede innovation, and to pursue vigorously every opportunity to diversify the programming voices that reach the public.

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Respectfully submitted,



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COMMUNITY BROADCASTERS ASSOCIATION'S OBJECTIVES

1. Determine a method to allow Class A and LPTV stations to obtain MVPD Access.

Class A and LPTV stations represent an incredible mixture of diversity in both programming and ownership. In order to preserve the services provided to the public by these stations, and allow them to obtain the necessary economic viability to sustain these services, we seek a solution to allow us access to all television viewers.

2. Seek funds for all Class A and LPTV stations to convert to digital operations with mobile television capability.

- A. \$350,000-\$500,000 per station for antenna, feed line, transmitter, exciter, studio-transmitter link, encoders, PSIP, and installation/labor fees associated with the above
- B. Participants in the program would agree to provide one (1) mobile video stream to the city of license for each station that participates in the program
- C. This program would guarantee primary spectrum protection of participating stations

3. Allow alternate use of Class A and LPTV spectrum.

Congress and the FCC have recognized the benefit to the public of allowing alternate uses of broadcast spectrum to successful bidders in the recent 700 MHz. auction. Consideration could be given to the idea of allowing existing Class A and LPTV licensees the ability to deploy and use any of the existing or future alternate modulation schemes authorized for use by the companies which prevailed in the 700 MHz. auction.

4. Reclassify and auction Class A and LPTV television spectrum from existing licensees who choose to participate, with revenue garnered to be split between the licensee (50%) and the Federal Government (50%). The Government will determine minimum bids in advance of the auction.

The absence of MVPD access, the lack of a comprehensive and economically viable plan for a conversion to digital operations, and the recently intensified economic hardship faced by these stations, resulting primarily from their inability to reach all TV viewers in their markets, has proven without a doubt that the existing legal and regulatory system under which these stations operate is no longer viable.