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

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	**MB Docket No. 07-269**
Competition in the Market for the	)	(Year 2008)
Delivery of Video Programming	)	

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. Introduction. The Community Broadcasters Association ("CBA") hereby submits these Comments in response to the Commission's *Supplemental Notice of Inquiry* in the above-captioned proceeding, FCC 09-32, released April 9, 2009. CBA is the trade association of the nation's Class A and Low Power Television (together "LPTV") stations.

2. Nature of the LPTV Industry. LPTV stations have the most significant representation of minority and female ownership of any broadcast industry. CBA surveyed the industry in December of 2008 and found that some 43% of LPTV stations have significant minority ownership, and some 60% have female ownership. This high level of minority ownership, together with ownership of the vast majority of LPTV stations by small businesses and the diverse local and niche programming that these stations provide, are all threatened by the current environment, where there is not enough competition in video distribution technologies to afford sufficient access by LPTV stations to potential viewers.

3. MVPD Competition. MVPD distribution continues to be a problem, because even though cable and satellite systems may compete for subscribers, and there may even be an occasional cable overbuilder, the attachment of any wire to the antenna input of a television receiver gives the provider of that connection a 100% monopoly on access to the receiver. The

effort required to change program suppliers, usually involving a home visit by a professional installer, constitutes a barrier that makes the market for changing suppliers far less elastic than it might otherwise be if based on just pricing and service.

4. Nevertheless, the entry of new contenders in the MVPD market, such as Verizon and AT&T, has had some beneficial impact on LPTV stations, because those companies have shown a greater interest in providing a variety of local broadcast services to their subscribers than have traditional incumbent cable providers. Thus CBA believes that further development of these competitive telephone-company operated systems should be encouraged.

5. Regulatory Environment. The overall regulatory environment has been detrimental to the LPTV industry. In particular, besides the perennial denial of mandatory access to MVPD distribution except in the very smallest markets, the decade-long application freeze during the full power DTV transition stunted the growth of Class A stations by preventing them from increasing their service area. This freeze allowed Low Power TV stations, which were not subject to the freeze, to move their facilities in toward large markets and block the expansion of Class A stations that were barred from filing their own expansion applications. The result of the freeze is that many Class A stations may face difficulty in replicating their analog service area when their digital conversion time arrives.[1]

6. The Commission's failure to rule on a declaratory ruling request by CBA to prohibit the marketing of digital-to-analog converter boxes that do not pass through analog signals also put LPTV stations at a serious disadvantage, because nearly all of the early converter box models completely blocked access to LPTV signals. Because the Commission failed to rule, CBA was

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[1] Digital replication of every station's analog service was a high priority objective of the Commission for full power stations during their digital transition. It is just as important for LPTV stations, if not more so, given that LPTV stations depend more on over-the-air viewers than full power stations do.

deprived of an opportunity to seek judicial review on the merits. CBA's only remedy was to seek a writ of *mandamus*, which the U.S. Court of Appeals for the D.C. Circuit rejected as premature. While mandamus might no longer have been premature by the end of 2008, it was too late for the LPTV industry to obtain any meaningful relief, since converter box distribution was already too widespread, and the manufacturing process was nearing its end based on an anticipated February 17, 2009, full power transition deadline.

7. Economic Environment. The economic environment changed so much for the worse in 2009 that it appears unproductive to dwell now on conditions that prevailed in 2008, so CBA will not discuss that issue in these comments.

8. DTV Transition. The full power DTV transition has been harmful to LPTV stations, because it has further narrowed the already shrunken potential universe of viewers who use over-the-air signals. Only one limited window was offered to LPTV stations to apply for companion digital channels, in 2006 – a window that resulted in many mutual exclusivities and a relatively small number of grants compared to the overall size of the industry and number of applications filed. Meanwhile, fear of losing television service has driven many viewers away from over-the-air viewing to subscription services. Potential over-the-air viewing of analog LPTV stations has been further shrunk by government-subsidized digital converter boxes that block analog signals or make it more difficult to view analog signals because they are not detected during a channel scan and can be viewed only by turning the box off. As the potential reachable audience shrinks, the ability of LPTV stations to survive also shrinks.

9. The Commission has contributed to the loss of potential viewers for LPTV stations by declaring over and over again that analog broadcasting will "end" on February 17, 2009 (a date later changed to June 12, 2009), without any reference to LPTV stations. Section 73.674 of the

Commission's own Rules explicitly requires mentioning LPTV stations in consumer education announcements, using this language:

> Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

But then the same rule offers a second option that omits the language about LPTV stations, allowing full power TV stations to "educate" their viewers by telling them that "all" analog television will cease in 2009, completely ignoring LPTV. Most full power stations chose the second option, which could not have done anything but confuse LPTV viewers.

10. Digital MVPD Tiers. The trend toward converting cable television to digital distribution technologies should eliminate for once and for all the argument that cable systems cannot carry LPTV stations because of capacity limitations. But even with hundreds of digital channels available, cable companies continue to refuse to carry many LPTV stations, in some cases admitting that they do not want to empower a source of competitive local advertising. The MVPD access issue remains important and must still be addressed. Emerging minority-oriented networks are adversely affected, because if they use LPTV stations for distribution, they must fight a battle for cable carriage that is not faced by established networks distributing *via* full power stations which enjoy mandatory MVPD carriage rights.

11. Programming and Multicasting. The availability of multicasting capability by full power stations has diverted programming away from LPTV stations that helped many LPTV stations build their business and enhance their local service. UPN is a prime example of a network that moved from LPTV stations to secondary digital streams of full power stations. The trend continues. LPTV stations that once thrived became crippled in 2008, often unable to continue the quality and quantity of local programming they once provided because of loss of

supporting national program sources. Only improved access to video distribution technologies will resolve this problem.

12. Conclusion. The LPTV industry was hit from all sides in 2008, with regulatory results that impaired the growth of its facilities, lack of access to MVPD systems, an inadequate opportunity to transition in an orderly manner to digital operation, loss of programming sources, and a DTV educational campaign that ignored the continued analog service that LPTV stations will provide. CBA has been consistently disappointed by the lack of effective action by the Commission to address the burdens faced by LPTV stations. Prospects worsened in 2008 rather than improved. The diversity of both ownership and programming that LPTV stations represent deserves more attention and affirmative action by the Commission.

Respectfully submitted,

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