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Electronically Filed

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Report of *Ex Parte* Communication
GEN Docket No. 09-51
ET Docket No. 04-186
ET Docket No. 02-380

Dear Ms. Dortch:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to report that an oral *ex parte* meeting was held on August 6, 2009, attended by Blair Levin, Coordinator of the Commission's National Broadband Plan and John Leibovitz of the Wireless Telecommunications Bureau. The attached written presentation was left with Messrs. Levin and Leibovitz. It summarizes and expands on the substance of the oral presentation.

The presentation was made by CTB Group, Inc., represented by Vernon L. Fotheringham and Peter Tannenwald. CTB Group filed written comments in GEN Docket No. 09-51 but not ET Docket Nos. 04-186 or 02-380. However, because the presentation touches on the National Broadband Plan and also use of "White Spaces" in the television broadcast spectrum, it is being filed in all three dockets.

Respectfully submitted,



Peter Tannenwald

Attachment

cc: Mr. Blair Levin (via e-mail, w/attachment)
Mr. John Leibovitz (via e-mail, w/attachment)
Mr. Vernon L. Fotheringham (via e-mail, w/attachment)

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Meeting with Blair Levin *et al.*

Date: August 6, 2009, 3:00 p.m.

Participants for CTB: Vernon L. Fotheringham, Managing Director

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Issue to be discussed: CTB's plans to use low power television channels for multiple purposes, including both broadcast and broadband services.

CTB has developed technology that allows a digital television broadcast station to provide both television and broadband services simultaneously over a 6 MHz TV channel. CTB is in the process of making contractual arrangements with LPTV stations and will also file applications for new stations when the opportunity becomes available later this month and in January (see DA 09-1487).

Benefits:

1. Rapid deployment of wireless broadband, including affordable new service to areas of light population density and urban pockets that do not have broadband choices.
2. Low cost because of use of existing infrastructure and favorable propagation characteristics of LPTV spectrum; 470-698 MHz band reaches further with fewer cells than 700-900 MHz or 2-3 GHz, allowing deployment over wider areas and at lesser cost. Capable of providing a third or fourth broadband pipeline at lower consumer pricing than existing services.
3. Efficient use of spectrum. Provides additional new services over existing licensed channels. Combines resources of multiple stations in a market.
4. Highly sophisticated use of "white spaces" for return link, although future upgrades will include return link in-band in a TV channel. We are working with a supplier of a sophisticated spectrum-sending technology that goes well beyond the capability of systems tested by the FCC's OET.
5. Includes both fixed and mobile applications.

6. Propels LPTV, which has been left at the side of the road during the transition, into the digital age, including build-out funding by CTB. It took over a decade to transition full power TV to digital, and there are still problems. CTB can significantly accelerate the process for LPTV.

7. Multiplies available video digital streams, thus providing additional competitive video service. Business model allows existing LPTV operator to continue television service, including local programming, if it so desires; otherwise CTB will provide broadcast TV content.

8. Rejuvenates ailing LPTV industry, denied MVPD must-carry, left out of and hurt by digital transition, damaged by the recession, and losing program sources.

9. Works within existing ATSC specifications and on existing licensed channels, minimizing application and rule making delays.

Relevant Pending Proceedings:

GEN Docket No. 09-51, Broadband Inquiry. CTB filed comments on 6/9/2009. http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520220333

ET Docket No. 04-186, White Spaces. CTB did not file comments.

MB Docket No. 05-312, Digital Television Distributed Transmission System Technologies. CTB did not file comments.

If desired, we can file this briefing sheet as an *ex parte* filing in any or all of these dockets. As these are public open rule making proceedings, and we are not discussing any other party's comments, so no other parties have been notified of today's meeting.

Prior FCC Meetings and Written Presentations: None, except informal occasional conversations with Hossein Hashemzadeh, Associate Chief, Video Services Division, Media Bureau. No written presentations have been made. There have been no hand-outs.

Recovery Act Funding or Policy Issues: No decision has yet been made as to whether and/or when to apply for funding. CTB may partner with applicants for funding.

FCC Actions Needed:

1. MB Docket No. 05-312, Distributed Transmission Systems: Allow Class A and LPTV stations to apply for DTS licenses on a regular basis. Revise Forms 346 (LPTV construction permit) and 301-CA (Class A CP) the same way Form 301 (full power CP) was revised to allow specification of multiple transmitter sites. The FCC thought there was insufficient interest to adopt permanent rules, but there is now. Report and Order, FCC 08-256:

54. The record is not instructive on the specific means to implement a Class A or secondary low power DTS service. We believe that low power stations should be able to use DTS for individual

station operation. However, we do not have an adequate record at this time to resolve the technical issues for low power stations as they differ from full power stations. Nor do we have sufficient indication of widespread interest in DTS among individual low power stations to warrant initiating a further notice at this time....To provide maximum flexibility, we will allow low power stations to request an experimental license to use DTS to build out their digital facilities, as we offered to full power stations in 2004. If there is demonstrated interest in or need for DTS as an alternative for individual low power stations on a permanent basis, we can initiate a rulemaking at that time. For now, Class A and low power stations that wish to experiment with DTS technologies may request STA on a case-by-case basis. [footnotes omitted]

2. Encourage and permit more flexible spectrum use. There appear to be no restrictions now on the technology used for LPTV ancillary services, but the overall digital transmission must adhere to the ATSC standard. There are more efficient ways to deliver digital data. They can be used without impairing TV service to viewers who use conventional ATSC receivers if the Commission allows a group of LPTV stations to deliver one free ATSC TV video stream per stations, but all on one channel, allowing the other channels to use superior technologies. Precedent is the Educational Broadband Service, where broadband service expansion is also encouraged. 47 CFR Sec. 27.1214(b):

(2) The licensee may shift its requisite EBS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite EBS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part ("channel shifting"), so that it can enter into a spectrum leasing arrangement involving full-time channel capacity on its EBS station, associated EBS booster stations, and/or EBS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of EBS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the EBS licensee in seeking a license renewal. In addition, an EBS entity receiving interference protection will continue to receive such protection if it elects to swap channels with another EBS or BRS station.

3. Protect the ability of analog LPTV stations to replicate their service area when flash cutting to digital. 47 CFR Sec. 73.3572(a)(4) gives priority to displacement applications over any flash cut application. Displacement applications are too easy to justify, as no showing of actual, as opposed to predicted, interference is required:

(ii) Provided further, that a low power TV, TV translator or TV booster station authorized on a channel from channel 52 to 69, or which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706 of this chapter, or which is located within the distances specified in paragraph (4)(iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates), may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area. Such an application will not be considered as an application for a major change in those facilities. **Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of other applications,**

provided the permittee or licensee had tendered its initial application for a new LPTV or TV translator station to operate on channels 52-69 prior to the August 2000 filing window.

Some analog LPTV stations which have been in place for many years cannot flash cut to digital without a reduction in service area, because displacement applications have been filed which propose digital operation and take advantage of interference immunity between analog and digital. When the analog station tries to convert to digital, that immunity is lost, and the flash cut may be rejected without a significant power reduction. This problem has been exacerbated because displacement applications may include a substantial increase in service area, including a move toward a large city, and priority attaches to the entire proposal. Any displacement application takes priority over an earlier filed flash-cut application by an existing station.

The remedy is to give equal priority to replication of the analog service area for a digital flash-cut application (so that the first-in-time rule prevails) and to confine the priority that a displacement application enjoys to replication of the displaced station's analog service area.

The restriction on flash-cuts is impairing CTB's ability to utilize existing LPTV stations, because CTB must convert all stations it uses to digital operation. The restriction also runs contrary to the longstanding Commission policy of preserving existing service over new service and is impairing the digital transition for LPTV by giving stations a negative incentive to convert. The proposed rule change will help existing stations by removing the negative incentive to convert, without leaving displaced stations in the lurch, because displaced stations will continue to have priority for replication of their own analog service area when they move to a new channel.

Suggested amendments to Sec. 73.3572(a) are on the next two pages. The proposed language would permit an existing station that is unable to replicate its analog service area when flash cutting to digital to claim displacement and thus have the right to file to move to a different channel.

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(4) The following provisions apply to displaced Class A TV, low power TV, and TV translator and TV booster stations:

(i) In the case of an authorized low power TV, or TV translator or TV booster which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 of this chapter or interference with broadcast or other services under § 74.703 or § 74.709 of this chapter, an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1 km), will not be considered as an application for a major change in those facilities.

(ii) Provided further, that a low power TV, or TV translator or TV booster station authorized on a channel from channel 52 to 69, or which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706 of this chapter, or which is located within the distances specified in paragraph (4)(iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates), may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area (including a change in antenna location of less than 16.1 km). A change in antenna location of 16.1 km or more will be permitted only if no channel in the range 2-51 is available that will avoid interference and continue service to 95% of the station's protected service area prior to changing channels. Such an application will not be considered as an application for a major change in those facilities. Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of other applications, provided the permittee or licensee had tendered its initial application for a new LPTV or TV translator station to operate on channels 52-69 prior to the August 2000 filing window, and provided further that priority will be offered only for service to the station's protected service area prior to changing channels.

(iii) A Class A TV station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § § 73.6011 or 73.613; a DTV station or allotment pursuant to § § 73.6013 or 73.623, or which is located within the distances specified below in paragraph (iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates); or other service that protects and/or is protected by Class A TV stations, may at any time file a displacement relief application for a change in channel, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area, provided the station's protected contour resulting from a relocation of the transmitting antenna is predicted to overlap some portion of the protected contour based on its authorized facilities. A Class A TV station displacement relief application will be considered a major change application, and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. However, these applications will not be subject to the filing of competing applications. Where a Class A displacement relief application becomes mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other non-displacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the Class A TV displacement relief application(s) to the exclusion of other applications, but only for service to the station's protected service area prior to changing channels. Mutually exclusive displacement relief applications of Class A TV, low power TV, TV translators or TV booster stations filed on the same day will be subject to competitive bidding procedures if the mutual exclusivity is not resolved by an engineering solution.

(iv)(A) The geographic separations to co-channel DTV facilities or allotment reference coordinates, as applicable, within which to qualify for displacement relief are the following:

- (1) Stations on UHF channels: 265 km (162 miles)
- (2) Stations on VHF channels 2-6: 280 km (171 miles)
- (3) Stations on VHF channels 7-13: 260 km (159 miles)

(B) Engineering showings of predicted interference may also be submitted to justify the need for displacement relief.

(v) An analog Class A, low power TV, or TV translator station that, through on-channel conversion to digital operation or an authorized companion digital channel, cannot provide protected service to at least 95% of its protected analog service area may at any time file a displacement relief application for a change in channel, together with technical modifications that are necessary to provide digital protected service to at least a 5% greater area than it could serve without displacement relief. Such an application will not be considered as an application for a major change in those facilities. Class A TV station displacement relief applications will be considered a major change application, and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. However, these applications will not be subject to the filing of competing applications. Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator, or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of other applications, provided the permittee or licensee had tendered its initial application for a new LPTV or TV translator station to operate on channels 52-69 prior to the August 2000 filing window, and provided further that priority will be offered only for service to the station's protected service area prior to changing channels.

(vi) Provided further, that the FCC may, within 15 days after acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of § § 73.3522, 73.3580, and 1.1111 of this chapter pertaining to major changes. Such major modification applications filed for Class A TV, low power TV, TV translator, TV booster stations, and for a non-reserved television allotment, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. See 47 CFR 73.5002(a).