

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Amendment of Parts 73 and 74 of the Commission's ) **MB Docket No. 03-185**  
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 )

To: The Commission

**COMMENTS OF LOW POWER TELEVISION LICENSEE GROUP**

1. Introduction. These Comments are filed in response to the Commission's *Further Notice of Proposed Rulemaking* ("FNPRM") in the above-captioned proceeding, released September 17, 2010.<sup>1</sup> The commenters ("LPTV Licensee Group" or "Group") all hold licenses in the Class A and/or Low Power Television Services. Most are in the process of transitioning their stations from analog to digital operation, consistent with market demand and their financial capabilities.<sup>2</sup>

2. Reliance on Marketplace. The LPTV Licensee Group supports the concept of ultimately bringing analog television operation to an end, but they believe that marketplace forces are sufficient to achieve that result in a timely and effective manner without government compulsion. For the Commission to impose a fixed deadline will place unnecessary financial logistical burdens on those least able to shoulder those burdens, with no benefit in terms of service to the public or increased efficiency in spectrum use.

---

<sup>1</sup> 25 FCC Rcd. 13833, FCC 10-172, 75 FR 63766 (Oct. 18, 2010).

<sup>2</sup> The LPTV Licensee Group is made up of KAXT LLC; affiliated companies EICB-TV LLC, EICB-TV East LLC, and EICB-TV West, LLC; Tiger Eye Broadcasting Corp., and Signal Above, LLC. The authorizations held by the group include analog, digital, and companion digital stations. Some stations have been constructed, and some are unconstructed. Some of the Group also have applications pending for new stand-alone and/or digital companion stations.

3. Important Reforms. The Group also urges the Commission to adopt two important proposed reforms, discussed further, *infra*: (a) allowing the use of a full service emission mask to limit adjacent-channel interference and (b) allowing Class A channels to elect to remain on their companion digital channel, rather than flash-cutting on their analog channel, after the transition, without forfeiting Class A spectrum protection.

4. Stations Motivated To Set Their Own Timetable. With completion of the full power television digital transition, the public is fully familiar with digital TV, all receivers sold today can receive digital signals, and the superior quality of digital pictures and sound is widely recognized. There is thus no reason for an LPTV station to continue analog operation unless there is a public demand for the service, the licensee does not have the financial resources to make the transition at this time, or terrain issues make digital service unreliable. Any of these three reasons justifies allowing each station to choose its own timetable and allow public demand, financial feasibility, and technological considerations to take their course.

5. Spectrum Uncertainty. There is another important reason why a forced transition now would be unduly harsh -- the impact of the Commission's announced plan to re-purpose up to 20 channels of broadcast television spectrum by reallocating them to wireless broadband.<sup>3</sup> Since Low Power Television and TV Translator stations are secondary to full power TV stations, many of them may be forced to change channels if full power stations are moved out of any reallocated band. Moreover, if the TV spectrum is truncated by 20 more channels, constituting a reduction of more than 50% of the band after already losing Channels 70-83 and then 52-69 in past

---

<sup>3</sup> See *In the Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rule Making in ET Docket No. 10-235, FCC 10-196, rel. Nov. 30, 2010, as well as the National Broadband Plan.

reallocations, some LPTV stations may not survive at all and may be forced to shut down.<sup>4</sup> When full power TV stations were forced to transition to digital, each of them was guaranteed an eventual channel home, so that they knew that their investment would have value after their transition. But without the security of knowing which channel they will end up with, or whether they will survive at all, there is no basis for an LPTV operator to make a significant new financial investment with its own funds and certainly no sound basis for securing outside financing. Indeed, even if a channel remains available in the future, an LPTV station cannot predict what kind of power and/or antenna pattern it will be able to use, so it has no way of knowing what kind of digital equipment to buy.<sup>5</sup>

6. In other words, it is grossly unfair and unreasonable, if not outright confiscatory, to force LPTV stations to invest scarce funds to complete their digital transition by a fixed deadline, unless the deadline is set several years after a final decision has been made on reallocating TV spectrum and moving full power stations into whatever spectrum is left. Only then will LPTV operators be able to evaluate their position and make or not make appropriate investments.

7. Government Funding Inadequate. Funding through the National Telecommunications and Information Administration (“NTIA”) to help stations make the transition falls far short of

---

<sup>4</sup> The omission of Class A and LPTV stations from the Spectrum Dashboard suggests a disrespect by the Commission for these stations. The public is also misled when the Commission actively promotes the use of this new web-based tool but then conceals the existence of so many locally-based small business entrepreneurs who in fact do occupy spectrum.

<sup>5</sup> Moreover, it is not even clear that stations will be required to adhere to the ATSC technical standard. SpectrumEvolution.Org is filing separate comments discussing its proposal that all TV stations be freed from the ATSC constraint, allowing them to adopt more efficient forms of digital modulation that will enable them to combine digital broadcasting and broadband, in furtherance of the early deployment objective of the National Broadband Plan. A forced investment in ATSC equipment makes even less sense if a better technology is on the horizon and ready for deployment.

what stations will need. Transitioning to digital operation can cost from \$50,000 to \$150,000.<sup>6</sup> NTIA funding is limited to only \$6,000 for some stations and \$20,000 as the maximum grant. The “rurality” requirement imposed by statute precludes grants to stations in urban areas -- the ones most frequently operated by minority owners. Moreover, the NTIA program is a reimbursement program, which means that the licensee must raise and spend cash money before it knows whether it will receive a grant and before it can actually receive funds; so the NTIA program does not help stations which do not have ample financial resources.

8. Logistical Issues. Finally, the logistics of a digital transition are daunting, especially if a station must change its channel, transmitter location, and/or power and antenna pattern. It took more than a decade for the full power industry to firm up their operating parameters and arrange for equipment purchases and installation, and there are only 1,783 full power stations.<sup>7</sup> As noted in the FNPRM, there are some 7,536 LPTV stations (including TV translators). The manufacturing industry will not be able to supply all those stations by the 2012 date suggested in the FNPRM, nor will stations be able to find enough engineers to perform installations and tower riggers to change out antennas where necessary. If the Commission imposes a deadline that is only two years away, it simply will not work in real life.

9. Application Processing. There is a reason why the Commission issues construction permits for three years. It concluded, after a rulemaking, that three years is a reasonable time for a grantee to make all necessary arrangements and to complete construction. It takes time to construct, and the three-year period properly runs from the date of grant. Digital transition

---

<sup>6</sup> A few stations with new transmitters may be able to swap out their exciter, but omitting program origination equipment will not bring the full benefits of digital quality to the public.

<sup>7</sup> See *Broadcast Station Totals as of September 30, 2010*, Public Notice, rel. October 22, 2010.

permits are no different.<sup>8</sup> If the Commission precipitates a sudden avalanche of transition applications, there is no reason to believe it will be able to process all of them in even as little as one year, thus suggesting at best a construction start goal, not a completion deadline, in 2012.

10. Processing Obstacles. The processing of applications and issuance of construction permits will not be a simple or routine process. While the Commission may have hoped some years ago that any stations that could not find a companion transition channel would be routinely able to flash cut to digital operation on their analog channel, that has not proved to be the case in practice. Many stations have made changes over the past few years, taking advantage of interference immunity between digital and analog signals, and have also agreed to accept interference from pre-existing stations. These changes have created first-adjacent, and even some co-channel, situations where an existing analog station can no longer flash cut, because a change to digital format would cause interference to another digital facility. Stations in that situation are effectively displaced and will have to find new digital channels. If large numbers of displacement applications are filed in a short time period, many will be mutually exclusive, requiring many months for negotiation of settlements or resolution by auctions. International coordination with Canada will add 6-12 months for northern border stations, and coordination with Mexico will add an indefinite, if not frustrating, amount of time for southern border stations.

11. Benefits of Residual Analog Service. The Commission notes in the FNPRM (at par. 5), that more than half of LPTV stations have taken steps to initiate the transition process. It is obvious, therefore, that market forces are already at work. Since only a small percentage of

---

<sup>8</sup> Some LPTV licensees that currently hold construction permits for flash-cut or digital companion channels planned their transition based on a three-year construction period and fear that the Commission might undermine their business plans by changing the terms of the permits they already hold.

LPTV stations are carried on cable,<sup>9</sup> most depend on over-the-air reception to survive; so they are much more sensitive to public needs and desires than some full power stations may have been. If they are still broadcasting an analog signal, the public must be watching. Whether it is a rural family, a low-income family, or a minority family, there is no reason to deprive those viewers of their analog service. The only reason to cut off the service prematurely would be to reduce spectrum occupancy by the LPTV station. However, spectrum occupancy remains at 6 MHz per station, whether analog or digital. Therefore, forcing a station to transition to digital does not reduce the amount of spectrum it occupies. Digital operation increases the number of program streams that one station can broadcast, but that is a sufficient marketplace force on its own to incentivize the transition.<sup>10</sup>

12. Avoiding Fallow Spectrum. Occupancy of a digital companion channel while retaining an analog channel does increase the amount of spectrum used temporarily; but there is no harm, because digital companion channels may be established only if spectrum is vacant. If the Commission truncates the number of channels allocated to TV, fewer channels will be available for companion operation, and more LPTV stations will have to flash-cut to digital on their analog channel. As long as a channel is available, however, it is more harmful to forbid its

---

<sup>9</sup> Additional marketplace pressure to transition to digital comes from the cable television industry. As cable systems have transitioned to all-digital distribution, vastly increasing the number of channels they can carry, they have sometimes become more amenable to carrying LPTV stations even without a must-carry obligation. However, the cable operator often demands that the LPTV station deliver a digital signal, so that the quality is comparable to that of full power stations carried by the system.

<sup>10</sup> It would not be unreasonable for the Commission to decline to grant any pending applications for new analog stations. However, those applicants invested in their applications in good faith; so the Commission should not dismiss them without offering an opportunity to amend to specify digital operation. Any rule declaring such an amendment to be a major change should be waived out of respect for that investment. Some applications have been pending for many years through no fault of the applicant, for reasons such as international coordination delays.

use than to permit its use, because fallow spectrum is a wasted resource that can never be recovered.<sup>11</sup>

13. Vacating Channels 52-69. The same reasoning applies to the proposed deadline of December 31, 2011, for all LPTV stations on Channels 52-69 to cease operation in that band. Existing rules already require LPTV stations to vacate those channels if a public safety entity or commercial auction winner is ready to operate. If the new occupants are not ready, however, then to force the LPTV station out is to leave spectrum fallow and again wasted. At most, the Commission should set a firm deadline for all LPTV stations on Channels 52-69 to apply for an in-core channel or else lose the priority now afforded to displacement applications.<sup>12</sup> It would be more reasonable to forbid new companion channel applications on Channels 52-69, to avoid unnecessary investment in a band that is likely to be short-lived for television broadcast use.

14. Class A Migration to Companion Channel. Allowing stations the maximum amount of flexibility to find a post-transition permanent digital home is important to the success of the LPTV transition. The Commission already allows Low Power Television stations to choose between their analog and digital companion channels, including turning back their analog channel and remaining on their digital companion or forfeiting their digital companion in favor of a flash-cut on their analog channel. This flexibility has allowed stations to avoid unnecessary displacement hardships. Class A stations, on the other hand, have been seriously disadvantaged by not being able to retain primary spectrum status if they choose a permanent home on their companion digital channel. They have had, and will continue to have, the same problems as

---

<sup>11</sup> It is possible to imagine a situation where an analog LPTV station cannot find a companion channel and also cannot flash-cut. In that situation, it might be reasonable to give that station some kind of priority in seeking a displacement channel, enabling it to force a single station occupying separate analog and companion digital channels to choose one or the other for a permanent home earlier than the final end of the LPTV digital transition.

<sup>12</sup> See 47 CFR §. 73.3572(a)(4)(ii).

Low Power Television stations when stations and applications accepting interference surround them and prevent a flash-cut on the analog channel. Now that the full power digital transition has been completed, and full power stations all have digital channel homes, there is no reason not to give Class A stations the flexibility to choose the better channel for permanent digital operation without risk to their Class A primary status, as long as their final choice complies with Class A technical requirements.

15. Construction Deadline for New Stations. Flexibility should also be allowed for new stations, where the permittee holds authorizations for both an unbuilt analog station and an unbuilt digital companion channel. Construction on either channel should be sufficient to preserve the basic authorization, allowing the permittee to decide which channel is best for long-term digital operation. Forcing construction of the analog facility makes little sense in a world where analog service is waning. The goal is to require construction of a station, in one format or another. There is also no reason to force the permittee to give up the companion channel and try to flash-cut on the original analog channel if the companion channel is the better channel.<sup>13</sup>

16. Public Outreach. The LPTV Licensee Group urges the Commission to recognize that LPTV licensees are much more accustomed than full power licensees to educating the public about changes in their facilities. Many have been displaced and have changed channels over the years, and they have managed to inform the public adequately, out of the need to ensure their own survival. They should be allowed to manage information about their own digital transition in the same way. If the government has resources available to devote to public education, then

---

<sup>13</sup> If the analog station is never built, the question of whether the companion channel construction period should be truncated to three years from the date of the grant of the analog permit may need to be decided on a case-by-case basis. It may be appropriate in many situations to require some build-out within three years of the original analog grant, but perhaps not so where the analog channel was displaced or disabled for some other reason beyond the control of the permittee.

the LPTV Licensee Group suggests that those resources would best be spent by making grants to LPTV licensees for public education campaigns, as the stations have the best expertise to gauge local needs. The Commission's Call Center should be kept up to date. Beyond that, however, requiring walk-in centers or other local activities needing staffing, the way the Commission did during the full power digital transition, will only compound the hardship for LPTV licensees and will divert resources they need to transition their transmission facilities. The resources of LPTV stations are far smaller than those of full power stations, and the Commission should not strain those resources lest the transition be impaired rather than furthered.

17. Avoid Misleading Publicity. One area where the Commission should intervene, however, is to prohibit Multi-Channel Video Program Distributors ("MPVDs") from advertising misleadingly that subscriptions to their services will be required to continue to receive television stations. It was one thing to advertise that MPVD subscriptions could help continue service from full power TV stations without the need for a new receiver or a converter box, because virtually all full power stations are carried by MPVDs. Class A and LPTV stations that did not convert to digital in 2009 suffered from the effects of that advertising, because nothing was needed to continue to receive their signals, yet much of the public was led to believe otherwise by being told that they would no longer be able to receive "television" on their existing receivers. Except where MPVDs carry Class A and LPTV stations, they should not be a part of public information activities relating to the Class A/LPTV transition.

18. Adopt Realistic Engineering Rules. The Commission suggests several possible rule changes that will reduce uniform assumptions and allow more realistic engineering analyses of LPTV applications. The LPTV Licensee Group supports any changes that will allow more individualized and realistic analyses. The full power emission mask has already been discussed. Allowing actual vertical radiation patterns to be considered is also desirable. Confining

transmitter site moves in minor change applications to 30 miles is also acceptable, as long as waivers are available if a station is displaced and cannot survive without moving more than 30 miles. An increase in existing power limits would be very helpful, especially for high-band VHF stations which are currently confined to the low-band VHF limit of 300 watts, even though the Commission has throughout the years traditionally allowed more power for high-band VHF.

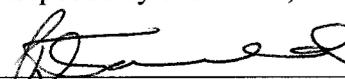
19. Interference Protection. Interference protection does not currently protect stations out as far as they are actually viewed, but increasing protection would have the disadvantage of reducing the number of channels available for displacement and companion channels. It might be helpful, however, if existing analog stations were protected as if they were digital stations with the same protected coverage contour, because that requirement would facilitate more flash-cut applications in the future.<sup>14</sup>

20. Conclusion. The LPTV digital transition will occur effectively and in a manner that best serves the public if the marketplace is allowed to dictate its pace. Meanwhile, the Commission can facilitate the transition by adopting reforms in its technical regulations to facilitate the grant of applications and flash-cutting by existing stations.

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> St., 11<sup>th</sup> Floor  
Arlington, VA 22209-3801  
Tel. 703-812-0404  
Fax 703-812-0486  
E-mail: [tannenwald@fhhlaw.com](mailto:tannenwald@fhhlaw.com)

December 17, 2010

Respectfully submitted,

  
Peter Tannenwald

Counsel for the Low Power Television  
Licensee Group

---

<sup>14</sup> The Commission also suggests subjecting all digital LPTV operations, including special temporary authority, to the ancillary services fee requirement in 47 CFR § 73.624. The LPTV Licensee Group has no objection to that proposal and agrees that a fee applicable to ancillary digital revenues should not depend on the type of authorization that covers the digital operation.