

Before the
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Department of Commerce
Washington, DC 20230

In the Matter of)
)
Low-Power Television and)
Translator Upgrade Program)

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

The Community Broadcasters Association (“CBA”) hereby submits its comments with respect to the above-captioned matter, as invited by the National Telecommunications and Information Administration (“NTIA”) at 73 FR 59586, published October 9, 2008.

The CBA is a trade association that represents over 2,900 Class A and Low Power Television (hereinafter referred to collectively as “LPTV”) stations nationwide, serving the interests of these stations in legislative, judicial, and regulatory matters. Members of the CBA attended a Public Meeting conducted by the National Telecommunications and Information Administration (“NTIA”) of the U.S. Department of Commerce on October 28, 2008 at which officials from NTIA explained the content of Section 3009 of the Deficit Reduction Act of 2005 (Pub. L. 109-171, as amended by Pub. L 110-295) and requested Comments on how they should implement that program. In response the CBA submits the following comments.

Comment 1. SEC.3009 provides that the program give assistance with the cost of upgrading from analog to digital to “eligible low-power television station[s].” Absent any detailed legislative history, NTIA must develop reasonable criteria for “eligibility” to participate in the digital upgrade program. The very title of SEC.3009 indicates legislative intent that LPTV stations, as well as translators, receive assistance in the digital conversion process through this program. Consistent with that specifically stated legislative intent, NTIA should adopt eligibility requirements that are broad enough and inclusive enough that a significant portion of the LPTV industry be deemed eligible for SEC.3009 funds.

Consistent with an inclusive definition of “eligible,” any licensee of an analog LPTV facility that holds or is expected to receive a Federal Communication Commission (“FCC”) “displacement” construction permit for a digital LPTV station should be deemed “eligible” for the purpose of applying for the digital upgrade program. A LPTV licensee that holds or is expected to receive a construction permit for an LPTV digital “flash cut”, or LPTV digital companion channel should also be deemed eligible for the purpose of applying to the digital upgrade program. In the case of analog licensees that have pending digital applications, NTIA should accept such applications and process them to the point of determining how much money the applicant can receive, but those funds should not be granted until the relevant FCC application has reached the point in the FCC’s processing line that the FCC can advise NTIA that the application is grantable.

Given the limited amount of funds available and the large number of stations needing assistance, NTIA should define “eligible” as meaning only LPTV or translator stations that have not already completed their conversion to digital on the date they make their application to the digital upgrade program. While this approach will admittedly penalize “early adapters,” it will also maximize the number of LPTV facilities converted as a result of the assistance provided by SEC. 3009. Eligibility should be limited to only those already operating analog stations. Those who have not yet built an analog facility should have budgeted funds to construct and can buy digital equipment with those funds instead of buying antiquated analog equipment. It is those who have already invested their capital in and are operating with analog equipment, and in addition, now face a second capital investment, that most need assistance to convert to digital.

Comment 2. The statute states that the funds reimbursement program be restricted to “eligible rural communities” and makes reference to SEC. 610(b) (2) of the Rural Electrification Act of 1937 (7 U.S.C. 950bb (b) (2)). The referenced definition of “rural community” is to a provision in the Rural Electrification Act of 1937 that defines rural community as being any area not contained in an incorporated city or town with a population in excess of 20,000 inhabitants. In order for this definition of “rural community” to not exclude virtually every LPTV station from participation in the Low-Power Television and Translator Upgrade Program, it is critical that NTIA deem eligible LPTV stations that serve both rural and urban communities with a single LPTV facility. Accordingly, if an LPTV station contains an incorporated city or town with a population of less than 20,000 in its 41 dBu (dipole adjusted) signal contour (i.e. the digital equivalent to the analog Grade B contour), that station should be deemed as serving a rural community and be eligible for SEC. 3009 funds. Nothing in the wording of the statute indicates stations should be “eligible” only if they exclusively serve communities of less than 20,000 inhabitants.

An example of the inclusive definition of an “eligible” station serving an eligible rural community that NTIA must adopt if this upgrade program is to be of any help to the LPTV industry can be understood by considering the eligibility of W63AU, Pittsburgh, PA. W63AU is currently operating in analog on UHF channel 63. It urgently needs to move “in core”, i.e. below channel 52, and to digitize in order to continue serving its off air audience. It has received authority from the FCC to digitize its facility and move to a tower in Wall, Pennsylvania, a small community east of Pittsburgh (but still within the Pittsburgh DMA). See BDFCDTL-20060331AKH, its digital displacement application. While its city of license is Pittsburgh, PA, a city of over 300,000 inhabitants, its proposed digital facility also serves a very rural group of communities and the farm land between them. The incorporated cities within its FCC protected contour include Wall, PA (pop 670), Trafford, PA (pop 3,027), Pitcairn, PA (pop. 3,370), and North Versailles, PA (pop 10,337). It also serves a significant part of a larger city named Monroeville, PA (pop. 29,349) and part of Pittsburgh, PA (pop. 300,000).

Examining the service contour of W63AU illustrates a fairly typical LPTV station with a mix of rural cities and urbanized areas, some of each which are completely or only partially within the LPTV station protected service contour. CBA believes that, because W63AU provides service to small cities like Wall, PA, Trafford, PA, and Pitcairn, PA, this licensee should be considered eligible to receive funds from SEC. 3009. The fact that W63AU will also serve a part of larger Pittsburgh, PA, should not disqualify W63AU. Nothing in the statute

suggests that an eligible station must provide service to rural communities exclusively.¹

Comment 3. SEC.3009 provides that the funds given to LPTV stations to convert their analog facilities to digital be distributed on a reimbursement basis. When considering how to go about making such reimbursements, it is important that NTIA factor in the industry practices for broadcast equipment purchases. Normally, a manufacturer will not ship a piece of broadcast equipment until full payment has been received. As a result, if NTIA does not construct its reimbursement program with these industry practices in mind, LPTV licensees will have to borrow the full price of their digitization equipment, purchase the equipment and then use the SEC.3009 reimbursement to repay the loans. In the process they will incur loan initiation fees, interest payments, and early loan termination fees that will greatly increase the cost of digitizing their stations. This latter scenario assumes a typical LPTV licensee can get such an equipment loan; a questionable assumption given today's economy.

To make SEC.3009 the most helpful, NTIA should issue to eligible LPTV digital upgrade program participants a "Reimbursement Letters of Credit." These certificates would be something akin to a bank letter of credit. The purpose of these Reimbursement Letters of Credit would be to give the LPTV licensees documentation that they could provide to equipment manufacturers, who should then be willing to ship their equipment, based on the certainty of SEC. 3009 funds to cover the purchase cost.

Comment 4. SEC.3009 specifies that "priority" be given to non-profit corporate licensees and LPTV licensees serving very rural areas, i.e. communities with less than 10,000 viewers. Proper implementation of these requirements dictates that NTIA must process applications for the digital upgrade program in two distinct groupings. These groupings should be carefully defined to achieve the objectives of getting funds to non-profit corporate licensees and licensees serving very rural areas sooner, while insuring that funds are not disproportionately allocated to one group of licensees at the expense of other licensee groups. For example, it would be inconsistent with the designation of SEC. 3009 as a LOW-POWER TELEVISION AND TRANSLATOR UPGRADE PROGRAM to define "rural areas of fewer than 10,000 viewers" or "non-profit corporations" so broadly that the entire \$65,000,000 appropriated for this program goes exclusively to translators that are licensed to very rural communities.

Accordingly, CBA believes that any priority given to non-profit corporations and very rural LPTV and translator stations should be short in duration. Perhaps these applicants should be allowed to file for an exclusive period of 30 days, after which applications would be open to everyone qualified. Alternatively, the "priority" period might begin as soon as NTIA begins accepting applications, but would end December 31, 2008. After that date applications could be filed by any qualified licensee. Furthermore, to ensure that funds are distributed equitably among the different groups of licensees, NTIA should limit the amount of funds distributed to the two priority groups - non-profit corporations and very rural licensees - to a combined total of not more than 50% of the total program appropriation. This proposed 50/50 division is equitable even though the number of very rural translator licensees may be greater than the number of less

¹ As explained in the next section of our comments, CBA believes W63AU should not be eligible for priority funding, it providing service to parts of communities with populations of more than 10,000 making it not a "very" rural facility.

rural LPTV stations, because the technical configuration of originating LPTV stations makes conversion to digital significantly more expensive.

Similarly, if NTIA is to ensure that all of the program's funds are not to be pre-programmed to go to the rural translator industry, precluding LPTV licensees from participation in the program, NTIA should define the priority qualification of "serving rural areas of fewer than 10,000 viewers" as narrowly as is practical. CBA believes only LPTV and Translator stations that serve at the least one incorporated city or town and have less than 10,000 people within their 29 dBu contour, should qualify for priority funding.² Stations that serve cities above the 10,000 mark, stations that serve several communities adding up to more than 10,000, and stations that do not serve any incorporated city or town, should not qualify for priority funding. CBA recognizes that this restrictive definition would preclude the priority funding of translator chain links that are actually intercity relays and serve no incorporated community. It is CBA's belief that nothing in the wording of the statute indicates an intention to fund the digital upgrade of these facilities, since they do not serve an eligible rural community.

CBA does not have a position regarding municipalities being "non-profit corporations" for the purpose of qualifying for priority SEC. 3009 funding. CBA notes that, unlike 47 C.F.R. Part 73 Full Power Television stations, LPTV stations are not sub-categorized as "commercial" and "non-commercial" by the FCC's Rules. This suggests that the intent of the statute was merely to give priority to rural translator cooperatives incorporated as non-profit entities for the purpose of receiving tax revenue and state appropriations, rather than giving priority to entities that incorporate as non-profit for the purpose of receiving favorable Federal income tax treatment. Whatever definition NTIA adopts, however, should be limited to ensure that a disproportionate percentage of the program's entire appropriation not go to this, or any other, subgroup of licensees.

Comment 5. Given the high cost of converting existing analog translator and LPTV facilities to digital, it is clear that SEC. 3009 was not appropriated enough funds to cover every type and piece of equipment that these licensees will need to operate digitally. CBA believes that the classes of equipment eligible for reimbursement should be restricted so that the total number of stations receiving assistance is maximized. Any equipment that is a part of the transmission chain is core to the digital conversion process. This would include antenna, feed lines, power dividers, mask filters, transmitters, RF amplifiers, exciters, modulators, demodulators, and encoders. Studio or program production equipment should not be funded. CBA believes it to be more helpful to the digitization of the translator and LPTV industry as a whole to limit the types of equipment eligible for SEC. 3009 reimbursement to transmission equipment, rather than funding anything and everything these stations could use in the digitalization conversion process.

Assuming the U.S. Government and broadcast industry Public Service Announcements are successful; the number of analog television viewers should have already begun to decline and should decline precipitously after February 17, 2009. As a result, it is imperative that both translators and LPTV stations convert to digital as quickly as feasible. Recognizing this

² the signal level that constitutes "service" should be lower (than 41 dBu) in very rural areas, because customary use of preamplifiers and higher gain receive antenna in very rural areas results in viewer reception of a lower signal level.

imperative, NTIA should heavily front load its distribution of the funds appropriated for SEC. 3009, so that funds reach the intended recipients as close to the February 18, 2009 conversion date as possible. CBA suggests funds be distributed over the four years of the program as follows: 54% of the funds in 2009; 27% of the funds in 2010; 14% of the funds in 2011; and, 5%^h of the funds in 2012. Alternatively, CBA is not opposed to all of the funds being distributed in 2009, provided that this rapid distribution does not necessitate a dramatic increase in the overhead cost of the implementation of the SEC. 3009 program, reducing the amount of funds available for distribution.

CBA further recommends that NTIA limit reimbursement to two classes of stations, originating and non-originating, and that for each class of station the reimburse be only up to a standardized amount. NTIA should reimburse up to \$20,000 to each qualified originating station and up to \$12,000 to each qualified non-originating station. If a program applicant selects equipment above the standard award, it would receive only the standard amount. If a program applicant is able to digitize using equipment costing less than the standard amount, it would only receive the amount actually expended on the “qualified” equipment. If the program applicant expended funds on equipment other than transmission equipment, it would not be eligible for reimbursement of those expenses.

Comment 6. Given the extremely limited appropriation for this program, and the resultant limited amount available to individual applicants, it is important that the NTIA administrative costs for SEC. 3009 be kept as low as possible. Accordingly, CBA believes that a competitive grant program such as the Public Telecommunications Facility Program is a very bad model for SEC. 3009. CBA believes a bare boned, internet-based, electronic application process is the best solution for qualifying and selecting SEC. 3009 program participants. Funds should be distributed on a first-come, first-served basis, consistent with the need to distribute these funds as quickly as possible.

NTIA should continue accepting applications until the entire SEC.3009 appropriation has been actually reimbursed. Since some applicants will receive “Letters of Credit”, but never seek reimbursement for the full amount granted, some funds will remain committed for a period of time, but ultimately will come back to the program. To limit this committed-but-never-expended pool of funds, NTIA’s funds commitment should run consecutive with and terminate with each licensees’ digital construction permit. If the FCC construction permit has the normal three year duration, the NTIA commitment should be for three years. If the FCC construction permit has already begun to run, for example if it is eighteen months old and has only eighteen months left, the NTIA commitment should be for eighteen months. Furthermore, since one important objective should be to get these SEC. 3009 funds spent on digitizing stations as quickly as possible, FCC extensions of construction permits should not trigger extensions of the NTIA commitments under SEC. 3009. Lastly, if upon reaching the expiration date of a construction permit, the analog licensee does not file an application for a “license to cover” the constructed digital station, thereby demonstrating that the equipment purchased with SEC. 3009 money was used for intended statutory purpose, that licensee should be required to reimburse the SEC. 3009 program the full amount of the initial grant. NTIA could then redistribute these funds to waiting, un-funded applicants.

If, in the unlikely circumstance that NTIA does not commit the entire SEC. 3009 appropriation by the end of 2010, NTIA could expand its eligible licensee and eligible equipment definitions to further accelerate the digitalization process and thereby expend the remaining funds. Conversely, CBA hopes that, if all of the SEC. 3009 appropriation is expended before all of the qualified applicants receive reimbursement; NTIA will seek, on an emergency basis, an additional appropriation covering the un-funded applicants.

Lastly, CBA wishes to express its disappointment and frustration that the eligibility provisions in the SEC. 3009 were so restrictive that most urban LPTV stations may be precluded from receiving the assistance provided by this legislation. It is unfortunate that this large group of television stations, many of whom originate significant amounts of locally produced programming, many of whom are licensed to small, economically disadvantaged businesses, and the vast majority of whom rely on over-the-air reception of their signals to reach viewers in their community, because they do not enjoy mandatory cable television carriage rights, will not receive Government assistance with the cost of converting to digital. Absent this assistance, many of these station will be forced to postpone their conversion to digital for years (or simply go out of business) while they struggle to obtain the capital necessary to pay the cost of converting to digital. Large amounts of specialized programming serving the elderly, foreign language groups, and minority communities may be lost forever in the process. The ownership diversity of the television broadcast industry will also be negatively impacted.

CBA respectfully suggests that NTIA immediately seek additional legislation to expand SEC. 3009 to include all LPTV station, regardless of the size of the community they serve, and that NTIA seeks an emergency supplemental appropriation to cover the anticipated cost this expanded SEC. 3009 program, when it is implemented, as suggested by these comments.

Respectfully submitted,

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