

Calendar No. 717

105TH CONGRESS
2^D SESSION

S. 1427

[Report No. 105-411]

A BILL

To amend the Communications Act of 1934 to require the Federal Communications Commission to preserve low-power television stations that provide community broadcasting, and for other purposes.

OCTOBER 12 (legislative day, OCTOBER 2), 1998

Reported with an amendment

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To amend the Communications Act of 1934 to require the Federal Communications Commission to preserve low-power television stations that provide community broadcasting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. FORD introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

OCTOBER 12 (legislative day, OCTOBER 2), 1998

Reported by Mr. MCCAIN, with an amendment

[Strike all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Communications Act of 1934 to require the Federal Communications Commission to preserve low-power television stations that provide community broadcasting, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Community Broad-
3 casters Protection Act of 1997”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds that—

6 (1) Since the creation of low-power television li-
7 censes by the Federal Communications Commission,
8 a small number of license holders have operated
9 their stations in a manner beneficial to the public
10 good providing broadcasting to their communities
11 that would not otherwise be available.

12 (2) These low-power broadcasters have operated
13 their stations in a manner consistent with the pro-
14 gramming objectives and hours of operation of full-
15 power broadcasters providing worthwhile services to
16 their respective communities while under severe li-
17 cense limitations compared to their full-power coun-
18 terparts.

19 (3) License limitations, particularly the tem-
20 porary nature of the license, have blocked many low-
21 power broadcasters from having access to capital,
22 and have severely hampered their ability to continue
23 to provide quality broadcasting, programming, or
24 improvements.

25 (4) The passage of the Telecommunications Act
26 of 1996 has added to the uncertainty of the future

1 status of these stations by the lack of specific provi-
 2 sions regarding the permanency of their licenses, or
 3 their treatment during the transition to high defini-
 4 tion, digital television.

5 **SEC. 3. PRESERVATION OF LOW-POWER COMMUNITY TELE-**
 6 **VISION BROADCASTING.**

7 (a) AMENDMENT.—Section 336 of the Communica-
 8 tions Act of 1934 (47 U.S.C. 336) is amended—

9 (1) by redesignating subsections (f) and (g) as
 10 subsections (g) and (h), respectively; and

11 (2) by inserting after subsection (e) the follow-
 12 ing new subsection:

13 “(f) PRESERVATION OF LOW-POWER COMMUNITY
 14 TELEVISION BROADCASTING.—

15 “(1) CREATION OF CLASS A LICENSES.—

16 Within 30 days after the date of enactment of the
 17 Community Broadcasters Protection Act of 1997,
 18 the Commission shall prescribe regulations to estab-
 19 lish a class A television license to be available to li-
 20 censees of qualifying low-power television stations.
 21 Such license shall be subject to the same license
 22 terms, and renewal standards as the licenses for full-
 23 power television stations except as provided in this
 24 section, and each class A licensee shall be accorded
 25 primary status as a television broadcaster as long as

1 the station continues to meet the requirements for a
 2 qualifying low-power station in subsection (2). With-
 3 in 30 days after such regulations are adopted, the
 4 Commission shall send a notice to the licensees of all
 5 low-power television licenses of the terms of this sec-
 6 tion. The Commission shall, within 30 days after re-
 7 ceipt of an application that is acceptable for filing,
 8 award such a class A television station license to any
 9 licensee of a qualifying low-power television station.

10 ~~“(2) QUALIFYING LOW-POWER TELEVISION STA-~~
 11 ~~TIONS.—For purposes of this subsection, a station is~~
 12 ~~a qualifying low-power television station if—~~

13 ~~“(A) within 24 months after the date of~~
 14 ~~enactment of the Community Broadcasters Pro-~~
 15 ~~tection Act of 1997 and for 6 months prior to~~
 16 ~~the filing of its Class A license application—~~

17 ~~“(i) such station broadcast a mini-~~
 18 ~~imum of 18 hours per day;~~

19 ~~“(ii) such station broadcast an aver-~~
 20 ~~age of at least 3 hours per week of pro-~~
 21 ~~gramming that was produced within the~~
 22 ~~market area served by such station, or the~~
 23 ~~market area served by a group of com-~~
 24 ~~monly controlled stations that carry com-~~
 25 ~~mon local or specialized programming not~~

1 otherwise available to their communities;
2 and

3 “(iii) such station was in compliance
4 with the Commission’s requirements appli-
5 cable to low-power television stations; and

6 “(B) from and after the date of its appli-
7 cation for a Class A license, the station is in
8 compliance with the Commission’s operating
9 rules for full power television stations; or

10 “(C) the Commission determines that the
11 public interest, convenience, and necessity
12 would be served by treating the station as a
13 qualifying low-power television station for pur-
14 poses of this section, or for other reasons deter-
15 mined by the Commission.

16 “(3) COMMON OWNERSHIP.—No low-power tele-
17 vision station shall be disqualified for a class A li-
18 cense based on common ownership with any other
19 medium of mass communication.

20 “(4) ISSUANCE OF LICENSES FOR ADVANCED
21 TELEVISION SERVICES TO QUALIFYING LOW-POWER
22 TELEVISION STATIONS.—The Commission is not re-
23 quired to issue any additional licenses for advanced
24 television services to the licensees of the class A tele-
25 vision stations but shall approve such license appli-

1 eations proposing facilities that will not cause inter-
2 ference to any other broadcast facility authorized on
3 the date of filing of the Class A advanced television
4 application. Such a licensee may, at the option of li-
5 censee, elect to convert to the provision of advanced
6 television services on its analog channel, but shall
7 not be required to convert to digital operation until
8 the Commission requires the use of digital or other
9 advanced technologies by all full-power television
10 stations.

11 ~~“(5) PRESERVATION OF CLASS A STATIONS.—~~
12 ~~Except as expressly permitted by this paragraph, no~~
13 ~~licensee of a class A television station shall be re-~~
14 ~~quired to cease operations, nor shall the license of~~
15 ~~such a licensee be rescinded or otherwise terminated,~~
16 ~~for the purposes of implementing any amendments~~
17 ~~to the table of allotments adopted before the date of~~
18 ~~enactment of the Community Broadcasters Protec-~~
19 ~~tion Act of 1997 to provide additional licenses for~~
20 ~~advanced television services. The Commission may~~
21 ~~order such a cessation, rescission, or termination~~
22 ~~only after compliance with the following require-~~
23 ~~ments:~~

24 ~~“(A) The Commission shall revise such~~
25 ~~table of allotments to preserve each class A sta-~~

1 tion unless the preservation of such station (i)
2 would render impossible the assignment of an
3 additional license for advanced television serv-
4 ices to a full-power station; (ii) would require
5 the Commission to revoke or rescind a construc-
6 tion permit issued to such full-power station; or
7 (iii) would cause a significant delay or increase
8 in cost of the construction of a digital television
9 facility by a network-affiliated analog station li-
10 censee in the top 30 markets.

11 “(B) If the Commission cannot revise the
12 table of allotments to preserve a class A station
13 as required by subparagraph (A), the Commis-
14 sion shall, to the maximum extent possible, re-
15 vise the table of allotments to preserve the class
16 A station in the same community of license,
17 using the same facilities, by assigning to such
18 station a different frequency.

19 “(C) If the Commission cannot revise the
20 table of allotments to preserve a class A station
21 as required by subparagraph (A) or (B), the
22 Commission shall seek to provide such licensee
23 with a class A license in a community of license
24 that is adjacent to the station’s previous com-
25 munity of license.

1 “(D) If the Commission cannot preserve a
 2 class A station as required by subparagraph
 3 (A), (B), or (C), the Commission shall award
 4 such licensee the license for another station in
 5 another community of license acceptable to the
 6 licensee, to the extent that the license for such
 7 other station is available. Such a licensee shall
 8 be preferred in the award of such other station
 9 license over any other applicant (other than an-
 10 other licensee of a class A television station that
 11 is required to relinquish its existing license).”

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Community Broad-*
 14 *casters Protection Act of 1998”.*

15 **SEC. 2. FINDINGS.**

16 *The Congress finds that:*

17 (1) *Since the creation of low-power television li-*
 18 *censes by the Federal Communications Commission, a*
 19 *small number of license holders have operated their*
 20 *stations in a manner beneficial to the public good*
 21 *providing broadcasting to their communities that*
 22 *would not otherwise be available.*

23 (2) *These low-power broadcasters have operated*
 24 *their stations in a manner consistent with the pro-*
 25 *gramming objectives and hours of operation of full-*

1 *power broadcasters providing worthwhile services to*
2 *their respective communities while under severe li-*
3 *cence limitations compared to their full-power coun-*
4 *terparts.*

5 (3) *License limitations, particularly the tem-*
6 *porary nature of the license, have blocked many low-*
7 *power broadcasters from having access to capital, and*
8 *have severely hampered their ability to continue to*
9 *provide quality broadcasting, programming, or im-*
10 *provements.*

11 (4) *The passage of the Telecommunications Act*
12 *of 1996 has added to the uncertainty of the future sta-*
13 *tus of these stations by the lack of specific provisions*
14 *regarding the permanency of their licenses, or their*
15 *treatment during the transition to high definition,*
16 *digital television.*

17 **SEC. 3. PRESERVATION OF LOW-POWER COMMUNITY TELE-**
18 **VISION BROADCASTING.**

19 (a) *AMENDMENT.*—*Section 336 of the Communications*
20 *Act of 1934 (47 U.S.C. 336) is amended—*

21 (1) *by redesignating subsections (f) and (g) as*
22 *subsections (g) and (h), respectively; and*

23 (2) *by inserting after subsection (e) the following*
24 *new subsection:*

1 “(f) *PRESERVATION OF LOW-POWER COMMUNITY TEL-*
2 *EVISION BROADCASTING.*—

3 “(1) *CREATION OF CLASS A LICENSES.*— *Within*
4 *120 days after the date of enactment of the Commu-*
5 *nity Broadcasters Protection Act of 1998, the Com-*
6 *mission shall prescribe regulations to establish a class*
7 *A television license to be available to licensees of*
8 *qualifying low-power television stations. Such license*
9 *shall be subject to the same license terms, and renewal*
10 *standards as the licenses for full-power television sta-*
11 *tions except as provided in this section, and each*
12 *class A licensee shall be accorded primary status as*
13 *a television broadcaster as long as the station contin-*
14 *ues to meet the requirements for a qualifying low-*
15 *power station in paragraph (2). Within 30 days after*
16 *the enactment of the Community Broadcasters Protec-*
17 *tion Act of 1998, the Commission shall send a notice*
18 *to the licensees of all low-power televisions licenses*
19 *that describes the requirements for Class A designa-*
20 *tion. Within 30 days after receipt of the notice, licens-*
21 *ees intending to seek Class A designation shall submit*
22 *to the Commission a certification of eligibility based*
23 *on the qualification requirements of this Act. Absent*
24 *a material deficiency, the Commission shall grant cer-*
25 *tification of eligibility to apply for Class A status.*

1 *The Commission shall act to preserve the contours of*
2 *low-power television licensees pending the final reso-*
3 *lution of a Class A application. Under the require-*
4 *ments set forth in subsection (f)(2)(A) and (B) and*
5 *subsection (f)(6) of this section, a licensee may submit*
6 *an application for Class A designation under this*
7 *paragraph only within 30 days after final regulations*
8 *are adopted. The Commission shall, within 30 days*
9 *after receipt of an application that is acceptable for*
10 *filing, award such a class A television station license*
11 *to any licensee of a qualifying low-power television*
12 *station.*

13 “(2) *QUALIFYING LOW-POWER TELEVISION STA-*
14 *TIONS.—For purposes of this subsection, a station is*
15 *a qualifying low-power television station if—*

16 “(A) *during the 90 days preceding the date*
17 *of enactment of the Community Broadcasters*
18 *Protection Act of 1998—*

19 “(i) *such station broadcast a minimum*
20 *of 18 hours per day;*

21 “(ii) *such station broadcast an average*
22 *of at least 3 hours per week of programming*
23 *that was produced within the market area*
24 *served by such station, or the market area*
25 *served by a group of commonly controlled*

1 *stations that carry common local or special-*
2 *ized programming not otherwise available*
3 *to their communities; and*

4 *“(iii) such station was in compliance*
5 *with the Commission’s requirements appli-*
6 *cable to low-power television stations; and*

7 *“(B) from and after the date of its applica-*
8 *tion for a Class A license, the station is in com-*
9 *pliance with the Commission’s operating rules*
10 *for full power television stations; or*

11 *“(C) the Commission determines that the*
12 *public interest, convenience, and necessity would*
13 *be served by treating the station as a qualifying*
14 *low-power television station for purposes of this*
15 *section, or for other reasons determined by the*
16 *Commission.*

17 *“(3) COMMON OWNERSHIP.—No low-power tele-*
18 *vision station shall be disqualified for a class A li-*
19 *cence based on common ownership with any other me-*
20 *dium of mass communication.*

21 *“(4) ISSUANCE OF LICENSES FOR ADVANCED*
22 *TELEVISION SERVICES TO QUALIFYING LOW-POWER*
23 *TELEVISION STATIONS.—The Commission is not re-*
24 *quired to issue any additional licenses for advanced*
25 *television services to the licensees of the class A tele-*

1 *vision stations but shall accept such license applica-*
2 *tions proposing facilities that will not cause inter-*
3 *ference to any other broadcast facility authorized on*
4 *the date of filing of the Class A advanced television*
5 *application. In reviewing such applications, the Com-*
6 *mission shall consider the impact of such a grant on*
7 *the primary television viewing audience of the appli-*
8 *cant. Such new license or the original license of the*
9 *applicant shall be forfeited at the end of the DTV*
10 *transition. Low-power television station licensees*
11 *may, at the option of licensee, elect to convert to the*
12 *provision of advanced television services on its analog*
13 *channel, but shall not be required to convert to digital*
14 *operation until the Commission requires the use of*
15 *digital or other advanced technologies by all full-*
16 *power television stations.*

17 *“(5) NO PREEMPTION OF SECTION 337.—Nothing*
18 *in this section preempts section 337 of this Act.*

19 *“(6) INTERIM QUALIFICATION.—*

20 *“(A) STATIONS OPERATING WITHIN CERTAIN*
21 *BANDWIDTH.—The Commission may not grant a*
22 *Class A license to a low power television station*
23 *operating between 698 and 806 megahertz, but*
24 *the Commission shall provide to low power tele-*
25 *vision stations assigned to and temporarily oper-*

1 *ating in that bandwidth the opportunity to meet*
2 *the qualification requirements for a Class A li-*
3 *cence. When such a qualified applicant for a*
4 *Class A license is assigned a channel within the*
5 *core spectrum, the Commission shall simulta-*
6 *neously issue a Class A license.*

7 *“(B) CERTAIN CHANNELS OFF-LIMITS.—The*
8 *Commission may not grant a channel within the*
9 *core spectrum under this subsection that includes*
10 *any of the 175 additional channels referenced in*
11 *paragraph 45 of its February 23, 1998, Memo-*
12 *randum Opinion and Order on Reconsideration*
13 *of the Sixth Report and Order: MM Docket No.*
14 *87–268. Within 18 months after the date of en-*
15 *actment of the Community Broadcasters Protec-*
16 *tion Act of 1998, the Commission shall identify*
17 *by channel, location, and applicable technical*
18 *parameters those 175 channels.*

19 *“(7) NO INTERFERENCE REQUIREMENT.—The*
20 *Commission may not grant a Class A license nor ap-*
21 *prove a modification of a Class A license unless the*
22 *applicant or licensee shows that the Class A station*
23 *for which the license or modification is sought will*
24 *not cause—*

1 “(A) impermissible interference within the
2 Grade B contour of any television station (as of
3 the date of enactment of the Community Broad-
4 casters Protection Act of 1998, or as proposed in
5 a minor change application filed on or before
6 such date) or the DTV service areas provided in
7 the DTV Table of Allotments, or subsequently
8 granted by the Commission prior to the filing of
9 a Class A application;

10 “(B) interference within the protected con-
11 tour of any low power television station or low
12 power television translator station licensed, au-
13 thorized by construction permit, or with a pend-
14 ing displacement application submitted prior to
15 the date on which the application for a Class A
16 license, or for the modification of such a license,
17 was filed; or

18 “(C) impermissible interference within the
19 protected contour of 80 miles from the geographic
20 center of the areas listed in section 22.625(b)(1)
21 or 90.303 of the Commission’s regulations (47
22 C.F.R. 22.625(b)(1) and 90.303) for frequencies
23 in—

1 “(i) the 470–512 megahertz band iden-
2 tified in section 22.621 or 90.303 of such
3 regulations; or

4 “(ii) the 482–488 megahertz band in
5 New York.”.