

**REGULATORY CLASSIFICATION OF LOW-POWER
TELEVISION LICENSEES**

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION

OF THE

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HOUSE OF REPRESENTATIVES

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REGULATORY CLASSIFICATION OF LOW- POWER TELEVISION LICENSEES

TUESDAY, APRIL 13, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Gillmor, Deal, Cubin, Rogan, Shimkus, Fossella, Markey, Luther, Klink, Sawyer, Green, and McCarthy.

Also present: Representative Norwood.

Staff present: Michael O'Rielly, professional staff member; Justin Lilley, majority counsel; Andrew W. Levin, minority counsel; Peter Filon, minority senior legislative intern, and Jon M. Peha, minority legislative fellow.

Mr. TAUZIN. May we please come to order? I am throwing rocks today; we have no gavel.

Today the subcommittee meets to hear testimony on the regulatory classification of low-power television licenses. I want to thank everyone for moving forward with this hearing on such short notice. A vast majority of low-power television stations embody the spirit that many of us envisioned when low-power was officially classified by the FCC, in the early 1980's. Today low-power television stations operate on unused television broadcast spectrum, at the lower power levels to bring television service to the American public.

Low-power stations also operate very similar to full-power stations in that they are required to comply with the appropriate FCC rules governing broadcast stations. Some markets, low-power television is one of the original competitors to full-service broadcasters. Competition, of course, is a good thing. Competition makes full-power broadcast services improve the quality of their product, makes them realize that markets are not monolithic, and communities served by local television stations are made up of small neighborhoods, towns, and cities where people can differ as much as their viewpoints. It, literally, signifies a pattern that one size doesn't, in fact, fit all. This rosy picture gets clouded, however, when the complicated process of converting to digital television is thrown into the mix.

Let me be clear: The members of the subcommittee have worked hard over the last decade to provide an opportunity for digital television to flourish. I am excited about the development of digital television, as I think all the members of our committee are. After the long and difficult debates, a number of technology battles, we are at the brink of seeing how consumers will respond to the services that digital television will offer.

Next month, another FCC deadline will arrive on DTV, and many broadcast stations will be required to provide a digital signal to their consumers. Most broadcast stations provide digital signals. Providing those signals will mean more digital programming, which in turn will mean consumers will have a reason to purchase digital sets and to invest in the technologies that will merge computers with our television screens. As Congress, we placed a number of limitations on the development of digital television in the Balanced Budget Act of 1997.

Congress' effort to bring a balanced budget to the American people was historic, and I believe it enhanced the growth of our robust economy. Converting over 1,500 full-power stations to digital signals will no doubt be a complex task. Larger broadcasters contend, and perhaps rightfully so, that creating a permanent license for qualified low-power stations may make the conversion to digital more difficult. Conversely, low-power stations are very concerned, and perhaps rightly so, that their ability to provide low-power service will be greatly curtailed by the conversion process, as the FCC re-allocates spectrum.

We need to think and to explore the exact repercussions of the conversion process on low-power stations. We should also examine whether congressional action is necessary to alter the current relationship between low-power and full-power stations, so that low-power is not altogether eliminated, as the conversion unfolds.

For instance, it is a fact that low-power licenses are secondary, meaning that low-power stations may have to be reallocated in the spectrum band. Also, how would this impact the market share of existing low-power stations? Because we now have to address these issues, I believe that this hearing is both well-timed and appropriate.

While I have become very familiar over the years with issues involving low-power stations, I want to thank my good friends, Mr. Deal, Mr. Norwood, Mr. Klink, and others, for bringing the particulars of their concerns to me over the last year. There is no question that a number of the subcommittee members care deeply about these issues and want to see an environment where low-power stations can continue to operate.

I recognize that Mr. Norwood and Mr. Klink have introduced legislation regarding low-power issues. Their bill would create a permanent license for qualified low-power stations. I have withheld my views on the bill, partly because, frankly, I think we need all need additional information. The hearing starts that process of exploring the issues in-depth, so we can all have a greater understanding. We need to put these issues on the table and begin thinking about how to resolve them, and that is, indeed, why we have gathered today, and we intend to learn a great deal at this hearing.

I want to thank the witnesses in advance for their testimony. I look forward to hearing from them.

I yield now to my friend from Massachusetts, the ranking minority member. Please welcome Mr. Markey, for your opening statement.

Mr. MARKEY. Thank you so much, Mr. Chairman, and thank you so much for having this very important hearing today.

The low-power television industry was established by the Federal Communications Commission in the early 1980's as a secondary broadcast service designed to further the telecommunications policy goal of localism. In an era of rapid consolidation, and of television broadcast properties at the national level, ensuring that local broadcasting remains vibrant and competitive is vitally important, and I believe that low-power television has a key role in fulfilling that policy objective.

In countless markets across the country, low-powered television stations are operated by local schools, religious groups, minority organizations, local governments, and businesses. Low-power stations serve many rural communities and also broadcast at traditionally underserved minority, foreign language, and bilingual populations. Moreover, these stations meet the need of many communities of providing programming of local interests. Whether it is a local high school football game or local town meeting, it is often the low-power television station that covers the event and broadcasts it to the local community.

As the television broadcast industry undergoes its transition to digital television and more spectrum is needed, low-power television stations as secondary licensees are at risk of being displaced until the transition is over. Without question, this committee has a strong interest in ensuring that the transition is a success. Given the length of the anticipated transition time, however, the practical reality for many low-power stations is that, if they are displaced, they may be off the air for a significant period of time in some markets.

One suggestion for ensuring that low-power television stations are not displaced during the digital transition is to put low-power stations on even par with full-power stations. This is but one of a number of difficult policy and engineering issues posed for the Congress and for the FCC.

The Commission is always at its best when it takes government resources and creatively works to get those resources into the marketplace to meet a need. When the Commission created low-power television during the Reagan administration, it essentially fit those new stations into existing markets, working carefully to limit interference to the incumbents. Many of those stations are now telecommunications policy success stories, and the witnesses we have here embodied the best in local, in community-oriented broadcasting.

I would observe, parenthetically, that FCC Chairman Kennard has proposed creating a new low-power radio service. Low-power radio could also meet an important need for local broadcasting, especially, in light of the rapid, and in my view, unhealthy consolidation of radio stations at the passage of the Telecommunications Act. Clearly, issues of interference need to be fully explored and worked

out, as was done in creating low-power television. But I want to applaud the Commission for exploring this worthwhile proposal.

And I want to especially commend the work of our committee colleagues, Mr. Norwood, Mr. Klink, and Mr. Deal, and others who have recognized the important role that low-power broadcasting can play in our communities. And I again commend Chairman Tauzin for calling this hearing and I pledge my support, my commitment to any process that you may decide is best for us to follow.

Mr. TAUZIN. Thank you very much, Mr. Markey, and I am pleased now to welcome Mr. Nathan Deal from Georgia for his opening statement.

Mr. DEAL. Thank you, Mr. Chairman. I want to join in thanking you for holding this important hearing. As you know, two-thirds of low-power stations serve rural communities. So therefore, it's not unusual that in a rural district, such as mine, low-power television is an important service factor. Local news is the backbone of these communities, and these low-power stations provide this service to otherwise unserved areas.

Therefore, I am strongly supportive of these stations, and am a co-sponsor of my colleague, Mr. Norwood's bill, the Community Broadcasters Protection Act. An excellent example of the broadcasting that is provided by such low-power stations is North Georgia Television, which is in my district. WDNN is carried on five cable systems and reaches approximately 200,000 viewers. Community news is the centerpiece of their programming, which offers information about business, education, public affairs, and political coverage. Low-power television stations are similar to community newspapers, covering stories and events that are often overlooked by larger affiliate stations in the market area. These stations are important tools in informing local communities, and may often be the only local programming channel that is received by viewers.

Qualifying low-power stations, in my opinion, should have the same permanent license status as other television stations, if they so choose. Therefore, I urge my colleagues, as we consider the information provided in this hearing, to look into the legislation that is proposed by Mr. Norwood and by Mr. Klink.

Again, Mr. Chairman, I want to thank you for holding this important hearing. Thank you.

Mr. TAUZIN. Thank you, Mr. Deal. The Chair is now pleased to welcome the gentleman from Minnesota, Mr. Luther, for an opening statement. He is not here. The gentleman from Pennsylvania, Mr. Klink.

Mr. KLINK. Thank you, Mr. Chairman, for recognizing me, and I thank you for holding this hearing today, and I appreciate your remarks.

Before I go on, let me just introduce to you one of the witnesses who is here today; somebody that, when I was working at KDKA many years ago, first came out of Indiana University of Pennsylvania as an intern and today as a broadcaster, my dear friend and constituent, Ron Bruno. I welcome Ron for being here with us today and look forward to his testimony, as well as I do the rest of the witnesses.

Let me just say, first of all, that I am very much concerned about the future of low-power television. As someone who has lived in

rural areas and as a former broadcaster, I can tell my fellow colleagues on the committee how important these low-power television stations are to the communities that they serve.

Let me just say that, you know, America has been made great because we have people that go into their garages and basements and invent things that often start new industries. The low-power broadcasters today are the inventors; they are the people that are going out there changing the face of broadcasting. They may be small, but each one of them is an integral part of the community that they often serve in. They put up compelling programming, with local focus, that very often is not available, wouldn't be carried by the other full-powered stations—things like high school sports, community civic celebrations, local government meetings, foreign language, for if you have a Spanish community or a Greek community or a Seiren community, they can offer programs in the language of those communities.

In that regard, I view the low-power television stations as the centers of innovation, creativity, and community service. But the transition to digital television is putting their future in jeopardy, which would have, I think, a disastrous consequence for the people in the communities in rural areas who are dependent upon their local coverage. And that is why with my good friend, Mr. Norwood, that with Mr. Deal's support, we have introduced H.R. 486, the Community Broadcasters Protection Act—to protect qualified low-power stations from losing their space on the dial as we transition to digital.

Mr. Chairman, I do understand that this is an oversight hearing; it is not a hearing specifically on our bill. But something does need to be done before we lose these stations entirely. Our bill simply would give some protection to the small mom-and-pop community broadcasters who comply with the act.

Under this bill, stations would only qualify for protection if they broadcast 18 hours a day, have 3 hours a week of locally produced broadcasting, be in compliance with the FCC rules for both low-power and full-power television stations, and not interfere with the Grade B contour of other stations. The least we can do, Mr. Chairman, is to help these broadcasters. Without some form of minimum protection, we can well lose this industry that is truly local broadcasting at its best.

Now I yield back my time.

Mr. TAUZIN. I thank the gentleman for your statement. The Chair now recognizes the vice chairman of our subcommittee, the gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman, and I applaud the decision to hold today's hearing to discuss the low-power television industry. As you may know, Mr. Chairman, I am a original co-sponsor of the Community Broadcasters Protection Act, sponsored by the gentleman from Georgia, Mr. Norwood.

I support the bill because I have three low-power stations in my district that are providing excellent service to my constituents, including strong local contact. An example, is WOHL TV, the FOX affiliate in Lima, Ohio—that's "Lima," not "Leema."

WOHL produces about 7 hours of local programming each week, including high school sports shows, weather reports, a daily news

magazine, a show called, "A View From the Hill" that features interviews with local legislators, political debates, Sunday morning church services, and a program called "In Focus." "In Focus" is a unique project, whereby WOHL is partnered with the Lima City and Allen County schools to provide technical support to teachers and students for the purpose of producing TV segments. These segments are then broadcast on WOHL each week.

Of course, it is common for low-power stations to serve rural communities and other underserved populations. I believe this is an important service worth preserving.

My sense is that there is room for low-power television alongside full-power, both during and after the conversion to digital. However, this is a technical question best answered by the experts at the FCC, with the oversight of this committee. We all want the transition to DTV to be successful. The problem, Mr. Chairman, is that low-power secondary spectrum priority means that there is always an element of doubt as to their continued viability. Needless to say, this creates great difficulty in raising capital and making needed investments. Hopefully, this hearing is the first step in establishing greater stability for these stations, so they can continue to grow and serve their communities.

Thank you Mr. Chairman, I yield back to balance my time.

Mr. TAUZIN. Thank you, my friend. The Chair is now pleased to recognize another gentleman from Ohio, Mr. Sawyer, for an opening statement.

Mr. SAWYER. Thank you, Mr. Chairman. I have a longer statement that I have prepared for the record; I don't intend to read it.

I would observe that in the greater Akron area, a community of some 600,000 to 700,000 people, we may be the largest community of our size anywhere in the industrial Midwest not to have a broadcast affiliate of any kind. We did up until recently, and the vacuum that has been lost in terms of local news coverage has been severely felt. I can fully appreciate, therefore, the sensitivities of those who are today being served well by low-power stations and the important role that they fulfill within their communities.

We have one low-power station in my community, it is largely a source of entertainment and advertising and probably does not fulfill the kind of role that many of you have brought to the communities that you serve.

In that sense, I will be interested in the course of this hearing and in the unfolding of this issue, to get a sense of what kind of criteria, in addition to those that Congressman Klink mentioned in his testimony, his opening statement, what kind of criteria you would foresee as being appropriate for low-power stations to receive a Class A designation or whether it would simply be all. A question of whether the FCC can or should do this through the regulatory structure or whether we have an appropriate role that ought to be done through legislation. And finally, how this legislation would affect full-power stations' obligations in high-definition television and programming in general.

With that, Mr. Chairman, I will submit my statement for the record and thank you for your time today.

[The prepared statements of Hon. Thomas C. Sawyer and Hon. Richard Burr follow:]

PREPARED STATEMENT OF HON. THOMAS C. SAWYER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, I want to thank you and Mr. Markey for holding this hearing this afternoon. I also want to thank our witnesses for coming to testify before us.

Mr. Chairman, I represent what may be the only city of its size in the industrial midwest that does not have a major local broadcast affiliate located within its own metropolitan area. Up until a few years ago, we had an ABC affiliate. However, that station was bought out and turned into a Home Shopping Network channel which provides family programming, but not local news. And while the broadcasting affiliates from Cleveland try to provide my constituents with their local news and broadcast programming, it is not the same. When this subcommittee held its first reauthorization hearing this year on the Satellite Home Viewer Act a few weeks ago I made this same point. I make this statement again today because I believe it has some relevance to the topic we are about to discuss.

In the early 1980s, the FCC created low-power television to allow small independent broadcasters who wanted to fill a void within in their community with an opportunity to deliver local programming and community news. These station operators were given their secondary license with the understanding that their broadcasts could not interfere with full power stations. There was also the understanding that the FCC could revoke their broadcast license at any time and use their allocated spectrum for other purposes.

Three years ago, we passed legislation that required the broadcast industry to begin delivering their programming in high definition by 2002 and that the broadcasters be given additional spectrum to convert to digital. After the conversion has been completed, the broadcasters must return their analog spectrum to the federal government. However, low-power television stations, who were given secondary or "temporary" broadcasting licenses, may be at risk of being put out of business if their spectrum is used by full power stations.

Today we will hear testimony on the effects digital conversion will have on low-power broadcast stations and on H.R. 486, the Community Broadcaster Protection Act, which has been introduced by Congressman Norwood and Congressman Klink. Their legislation would essentially elevate low-power television stations to full-power station status by providing them with Class A status. I also understand that there is a petition before the FCC that would provide relief to low-power television stations by granting low-power stations Class A status through the regulatory process.

Given the current situation in my congressional district, providing Class A status to low-power television stations may be a good idea. However, there are a few questions I would like to have answered before I come to any conclusion.

- First, there are currently about 2100 low-power television stations operating in the United States. What type of criteria will be used to determine which low-power television stations receive the new Class A designation or will all of them be granted the license?
- Second, if the FCC is deliberating over the petition before it in this area, is congressional action truly needed or does the FCC have the regulatory authority to find a solution to this problem?
- Finally, I want to know the effects this action will have on the full power stations' abilities to meet their obligations with respect to high definition television and their future programming abilities.

Mr. Chairman, I hope our panelists will be able to answer these questions. Again, thank you for calling this hearing today.

PREPARED STATEMENT OF HON. RICHARD BURR, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I want to thank you for allowing me the opportunity to address your Subcommittee today. The issue under discussion is of vital importance to rural communities not only in my district, but across the nation as well. These communities rely on low-power television stations to broadcast important news and community information that would otherwise be ignored by the larger high-power stations. Unfortunately, because their licenses are considered "secondary" or temporary, low-power stations top the list of licensees who will lose their frequency when spectrum reallocations become necessary. While some of these stations receive new channels, many simply go dark.

When a low-power station is forced to stop broadcasting, the effects are felt throughout the community. Without the low-power stations in my district, many

local charities and non-profit organizations would not benefit from the hours of air time allocated for fund raising. Residents of these communities would miss out on many minority syndicated programs not carried by high-powered stations. They could not see the Carolina Hurricanes National Hockey League games or watch their children participate in the state high school football and basketball championships. Finally, because these stations are locally owned and operated, they provide many economic benefits to the communities they serve.

In order to allow low-power television stations to continue serving their communities, I encourage the members of the Subcommittee to look favorably on legislation similar to the Community Broadcasters Protection Act. As you know, this important bill would create a permanent "Class A" license for low-power stations, thus removing the constant threat of spectrum reallocation while insuring that the stations remain committed to serving their communities. This type of license is not new to us. It has worked quite well for low-power FM radio stations, and I strongly believe that a similar license will work just as well for television. Without this protection, many communities may not only lose a valuable source of community news and information, but an important member of the community as well.

I commend Mr. Norwood for introducing this bill. He continues to be a strong champion for low-power stations, and I look forward to working with him, the members of this Subcommittee, and my colleagues on the full Commerce Committee on this important legislation. Again, Mr. Chairman, I want to thank you for holding this hearing and for the opportunity to address you today.

Mr. TAUZIN. I thank the gentlemen.

Without objection, any written statements members wish to submit will be accepted into the record.

The Chair is now pleased to recognize another gentleman from Ohio, the vice chairman of the full Commerce Committee, Mr. Paul Gillmor, for an opening statement.

Mr. GILLMOR. Thank you very much, Mr. Chairman. I waive an opening statement.

Mr. TAUZIN. I really thank the gentleman from Ohio.

The Chair now recognizes the gentlelady from Missouri, Ms. McCarthy, for an opening statement.

Ms. MCCARTHY. Thank you very much, Mr. Chairman, and thank you for having this hearing.

I won't repeat what Mr. Markey and others have said about the importance of low-power stations; they are key to my district in educating the public and serving communities which would otherwise not be served. So I thank each of the panelist today for being here. It is very important.

Mr. Chairman, I think, as we advance equitably into the digital age, we need to be sure that low-power television stations remain in the market. I would hope this committee, as we look at legislation to improve, would include language to require the FCC to conduct a study to determine the actual amount of spectrum available, and the idea of just relying on sort of theoretical and abstract numbers is of concern to me. I think we need to request that, and I hope that we would consider that in any discussion that we have on the legislation.

And I will submit my entire statement for the record.

Mr. TAUZIN. I thank the gentlelady. The Chair recognizes the gentleman from California, Mr. Rogan, for an opening statement.

Mr. ROGAN. Mr. Chairman, thank you. Very briefly, I just want to simply thank the Chair for calling this hearing.

As we transition from analog to digital television signals, there are a number of issues we are going to have to address here in Congress dealing with both equity as well as service. This hearing will be a big help to all of us, as we wind our way through the leg-

islative process. I thank the Chair for calling this hearing. I yield back the balance of my time.

Mr. TAUZIN. Mr. Shimkus.

Mr. SHIMKUS. I am anxious to hear from our panel of experts, so that is all I have to say, Mr. Chairman.

Mr. TAUZIN. Mrs. Cubin. Is she still here? I think we have gone through our panel.

Let me thank the members for their opening statements and, again, remind everyone that, if you wish to submit a written statement, it will be part of the record.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

I thank Chairman Tauzin for calling this hearing. Some people had argued in the waning days of the last Congress that we should take action on this issue in relation to other legislative issues that were being considered at the time.

The Committee was concerned that there was not a substantial enough record to justify such action. As I always prefer regular order when at all possible, I am glad that Chairman Tauzin is turning to this issue early in the session.

The story of low power television is a unique one. Of the large number of low power stations, no one is quite sure which are viable stations and which ones are stations in name only. I have been told that there may be upwards of 700 legitimate stations out there providing service. That leaves a large portion of the over 2000 low power stations that may be nothing more than paper that is filed at the FCC. This is not too surprising given the minimal regulations designed to allow low power to flourish.

In some rural markets—as we have learned all too well in the debate over the Satellite Home Viewer Act reform effort—local full power television signals are not available to consumers. In many of these markets low power television can be the only access to local news and weather. In some other instances, low power stations provide unique programming to serve the unique interests of consumers.

Currently, the regulatory classification puts low power television as a secondary spectrum priority. For those consumers that rely on low power stations for their local news during a miserable snow storm, school closing or whatever there is no secondary status about it. It is clear that in some communities low power stations provide a valuable service to consumers.

And a hearing on low power television would be interesting in and of itself if the entire broadcasting industry was not making the conversion to digital television. The digital conversion plan is going to require the broadcasting industry to harness all of its resources. Along with this comes the question, what happens to low power television stations during and after the conversion.

I want to congratulate the competitive, entrepreneurial spirit of the low power community. Many of the low power stations are family run stations that operate on shoe-string budgets in order to bring service to a community. Mr. Stamler points out in his testimony that he and his wife went three years without a paycheck and that their ultimate, original investors were the local dairyman, the farm implement dealer, and a retired federal employee, a physician, an accountant and others.

This history reminds me of the stories we hear about the personal computer revolution, and the recent development of the Internet and electronic commerce. These are real American entrepreneurs.

Some say, however, that low power television stations have always been on notice that their service could be impeded or discontinued at a moment's notice. They have been well aware of the rules of the road. Thus, the difficulties with the transition to digital television should be no surprise.

The purpose of this hearing is to hear more about the impact of the FCC's conversion plan, how it will impact full power television stations, how it will impact low power stations and whether the regulatory classification of low power licenses is appropriate in a digital environment.

I trust this will be an informative debate so that Members can fully understand the differing perspectives on this important issue.

I thank the Chairman again for holding this hearing.

Mr. TAUZIN. I am now pleased to welcome our panel. Let me, first of all, apologize to our panel, as we may have some disrup-

tions in the hearing today. I understand the Democrats will have a briefing on Kosovo at 3 p.m. So we will get as far as we can, as rapidly as we can. And we will also have a briefing later on, I think, this afternoon. So we are going to try to wrap as fast as we can.

In that regard, we are going to use the 5-minute rule, which means that I will switch you on. The green light is not working, but the red light is. So when the red light comes on, that means your 5 minutes are up, and if you kind of wrap when you see that red light hitting.

Let me thank you all for coming. We will start, please, with Mr. Stewart. Roy Stewart, the Chief of Mass Media Bureau of the FCC, for your statement, Mr. Stewart.

All of your written statements are part of our record; we have them. If you would summarize and give us the highlights of your testimony? Mr. Stewart.

STATEMENTS OF ROY J. STEWART, CHIEF, MASS MEDIA BUREAU, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY KEITH LARSON, ASSOCIATE CHIEF, ENGINEERING, MASS MEDIA BUREAU; JAMES C. MAY, EXECUTIVE VICE PRESIDENT, THE NATIONAL ASSOCIATION OF BROADCASTERS; ARTHUR D. STAMLER, GENERAL MANAGER, WAZT-LPTV; MICHAEL SULLIVAN, EXECUTIVE DIRECTOR, COMMUNITY BROADCASTERS ASSOCIATION; GEORGE E. DEVAULT, JR., PRESIDENT, HOLSTON VALLEY BROADCASTING CORPORATION, AND RON BRUNO, GENERAL MANAGER, WBGH-TV

Mr. STEWART. Mr. Chairman, ranking members, and members of the subcommittee, good afternoon, I am Roy Stewart, Chief of the Mass Media Bureau of the Federal Communications Commission. Accompanying me today is Keith Larson, Associate Chief for Engineering of the Mass Media Bureau.

I welcome this opportunity to discuss low-power television and legislation intended to protect community broadcasting stations, that provide beneficial local programming to their communities. The Commission's Chairman, William Kennard, has submitted a statement for the record to the subcommittee, in which he expresses his strong support for Class A status for qualifying low-power television stations.

Low-power television stations operate on the same channels as full-service broadcasters, but do so at much lower power levels. Because low-power stations are secondary, they are subject to displacement at any time by primary full-service television stations. Despite their secondary status, many low-power stations have become important sources of local programming in their communities; providing local news, weather, community affairs, local election, and sporting event coverage, as well as programming directed to unserved and underserved audiences. Indeed, many low-power stations may be the only television outlet in their community.

The LPTV service has also increased the diversity of broadcast station ownership. Station operators include such varied entities as schools, colleges, churches, local governments, community groups, and radio and television broadcasters. And the service has provided

first-time ownership opportunities to minority groups, women, and a range of small businesses.

The Commission has long recognized the value of low-power television service and has extended considerable effort over the years to promote and protect it. At the outset of the service, I was the Chief of the Video Services Division in the Mass Media Bureau. I well remember the flood of applications that overwhelmed our ability to process and dispose of them. We turned to Congress for help, and obtained staffing and computer resources, as well as statutory changes that greatly streamlined our processing methods.

This assistance enabled us to implement the service, and today there are some 2,100 licensed LPTV stations. Although secondary, low-power stations have, until the recent introduction of the DTV service, largely managed to avoid displacement by full-service broadcast stations. As the DTV transition begins in earnest, however, the Commission has acknowledged that there is insufficient spectrum to protect existing low-power television stations and provide a second channel for digital service to more than the 1,600 existing full-power television stations. Working with the LPTV industry, the Commission has taken numerous steps to mitigate the impact on low-power television stations, including relaxing certain interference standards, permitting immediate displacement relief applications to be filed, and modifying more than 60 DTV allotments to eliminate conflicts with LPTV service. But even with these measures, many low-power television stations are still subject to being displaced, including stations that have made significant contributions to their local communities.

The bill before the subcommittee, the Community Broadcasters Protection Act of 1999, addresses many of the problems now faced by low-power television stations as a result of their secondary status. It is very similar in scope and intent to a petition for rulemaking filed with the Commission by the Community Broadcasters Association. The legislation proposes to create a new Class A television service that would enjoy primary status and would not, therefore, be subject to displacement. The bill and its objective of providing a measure of permanence and protection for the many low-power television stations that contribute significantly to their local communities, is both timely and commendable. This protected status is critical if we are to preserve these valuable outlets for diverse and uniquely local programming.

The bill seeks to craft eligibility and procedural provisions to establish Class A service in a manner that does not unduly disrupt existing television service, or the transition to digital television. Let me turn to three particular provisions of the bill that may warrant further examination by the subcommittee. Okay.

First, the contour protection provisions of the act, which gives eligibility to Class A stations during dependency of any rulemaking that we had to do. While this approach would give early protection to Class A stations, it could also preclude us from being able to authorize new full-power television analog stations. That may limit our flexibility to make necessary adjustments to the technical parameters of the DTV stations operating pursuant to our DTV table of allotments.

The second aspect deals with the requirement that we do not have a bidding mechanism to deal with competing Class A station applications, or translators. It would require us not to be able to use what came out of the Balanced Budget Amendment—competitive bidding process. And we would have to sit there and try to figure out what comparative criteria to use. I think we can agree, that we have had a problem, as a Commission, trying to figure out comparative criteria for competing applications.

And the third part deals with the fact that there are no ownership restrictions on the Class A stations. But yet, the bill appears to contemplate that Class A stations would enjoy primary status. Then it should be subject to most of the Commission's full-service obligations. I have asked that the subcommittee may wish to consider whether full-service ownership rules should apply.

And, finally, if I may, Mr. Chairman, I want to close by re-stating Chairman Kennard's unequivocal commitment to creating a Class A low-power television service. He firmly believes that affording qualifying low-power television stations with substantial and enduring protections, consistent with the needs of a digital television transition, will serve the public interest.

Thank you, Mr. Chairman, for the opportunity to appear before you, and I am prepared to answer any questions.

[The prepared statement of Roy J. Stewart follows:]

PREPARED STATEMENT OF ROY J. STEWART, CHIEF, MASS MEDIA BUREAU, FEDERAL COMMUNICATIONS COMMISSION

I. Introduction

Mr. Chairman, Ranking Member, and Members of the Subcommittee: Good afternoon. I am Roy Stewart, Chief of the Mass Media Bureau at the Federal Communications Commission. Accompanying me today is Keith Larson, Associate Chief for Engineering of the Mass Media Bureau. I welcome this opportunity to discuss low power television community broadcasting and legislation intended to protect community broadcasting stations that provide beneficial local service to their communities.¹ As you know, FCC Chairman William E. Kennard has submitted a statement for the record in which he expresses his strong support for Class A status for qualifying low power television stations.

II. Low Power Television History

Low power television (LPTV) stations are broadcast stations that operate on the standard VHF and UHF television channels, but at much lower power levels than conventional TV stations. LPTV stations may retransmit programming received from other sources or originate their own programming. LPTV stations have a "secondary" frequency use status in that they may not interfere with, and must accept interference from, conventional "primary" TV stations.

The Federal Communications Commission created the Low Power Television Service in 1982. The FCC believed that LPTV stations could increase television programming diversity in both urban and rural areas and that these stations would be particularly well suited to provide local programming.

The LPTV service has overcome many obstacles in its brief history. Its early growth was impeded by the FCC's difficulty in processing the tens of thousands of applications which had rapidly accumulated, nearly all of which were mutually exclusive with many other applications. Congress appropriated funds for computers and additional staffing to help the FCC meet its LPTV processing challenge. It also enacted legislation to enable LPTV licenses to be awarded by random selection (lottery), rather than through the hearing process adopted in the LPTV rulemaking proceeding. In 1984, facing a backlog of more than 30,000 applications, the FCC froze application filings for new LPTV stations. The filing freeze continued for more than

¹The comments and views expressed in this Statement are offered in my capacity as Chief of the Commission's Mass Media Bureau and may not necessarily represent the views of individual FCC Commissioners.

3 years, during which the FCC solved the processing problems and accelerated the pace of authorizing LPTV stations. By 1986, about 150 LPTV stations were operating. The early LPTV stations had considerable difficulty obtaining programming and funding from conventional sources. Yet, the service continued to grow. By 1989, 500 LPTV stations were licensed to operate in the lower 48 states, and by 1993, the number of licensed stations had grown to 1,000. Another 250 LPTV stations operated in Alaska.

III. The LPTV Service Today

There are currently more than 2,100 licensed LPTV stations. LPTV stations operate in more than 1,000 communities of all sizes and in all 50 states. The LPTV service has increased the diversity of broadcast station ownership; station operators include such diverse entities as schools, colleges, churches, local governments, community groups and radio and TV broadcasters. The service has also provided first-time ownership opportunities to minority groups, women and a variety of small businesses. LPTV stations can be operated in a wide variety of ways. FCC rules do not require minimum hours of station operation or minimum amounts of locally produced programming. Some stations primarily retransmit programming imported from full-service television stations, satellites or other sources. Others focus on program production. The hallmark of the LPTV service has been locally oriented programming. LPTV stations also often provide programming to unserved or underserved audiences, including "niche" programming tailored to audiences with specific interests. Many LPTV stations serve as a community's only local television station and provide coverage of local news, weather, community affairs, local elections and events such as high school football games.

IV. Digital Television Impact on LPTV

Despite their secondary status, until the arrival of the digital television era, few LPTV stations had been displaced by primary television stations. The Commission received very few complaints of interference from LPTV stations to analog TV reception. Where interference occurred, the affected stations were usually able to find a suitable replacement channel on which to operate using an FCC "displacement relief" provision. That provision permits stations with an interference conflict to seek replacement channels at any time on a noncompetitive, "first-come" basis. Thus, the disruption of LPTV service during the analog television era has been minimal.

The prospects for LPTV service disruption, however, have been markedly increased by the emergence of the digital television (DTV) service. The FCC concluded in its DTV proceeding that there was insufficient spectrum to protect the existing service of secondary LPTV stations and to provide a second channel for DTV service to more than 1,600 full-service stations. It also concluded that LPTV stations would remain secondary to, and must not interfere with, DTV service. The Commission, however, provided several measures intended to mitigate the impact of the transition to DTV on LPTV service. The channel displacement relief provisions were extended to stations potentially affected by DTV stations or channel allotments. Applications for replacement channels were accorded the highest priority among applications in the LPTV service.

Several of the interference protection rules imposed on LPTV were found to be overly protective and were either eliminated or made less restrictive. LPTV stations were afforded additional operating flexibility and permitted to negotiate interference agreements with other stations in the LPTV service. The Commission also expanded its policy of granting waivers of the interference rules based on consideration of terrain shielding. It increased the maximum power limits in the LPTV service, primarily to enable LPTV stations to operate on channels adjacent to those of full power stations operating at the same location. Finally, the Commission modified more than 60 DTV allotments to eliminate conflicts with one or more LPTV stations.

Despite all of these measures, the DTV transition is expected to have a significant, adverse impact on many LPTV stations, particularly those stations in urban areas. As an indication of the extent of potential displacement, in June 1998 the Commission received more than 1,000 "displacement relief" applications from stations in the LPTV service, seeking operations on different channels. More than 400 of these applications have been granted; many others are mutually exclusive and, as the law now stands, these LPTV operators will be required to bid against each other to obtain one of the limited number of available replacement channels.

V. The Rule Making Petition of the Community Broadcasters Association

The FCC has received and is now considering a rulemaking proposal submitted by the Community Broadcasters Association (CBA), an association of LPTV station operators. CBA's petition asks the FCC to amend its rules to provide additional protections for a limited class of LPTV stations. CBA proposes that the FCC create a

Class A television service for qualifying LPTV stations. LPTV licensees would qualify for Class A status by demonstrating that for the three month period prior to submission of their applications their stations complied with the minimum operating schedule for TV broadcast stations and broadcast not less than 3 hours in each calendar week of locally produced programming. Applicants would also be required to certify that as of the application filing date, their station operations complied with most rules applicable to full power TV stations, generally excepting only those rules governing their initial authorization and station power. Applications for Class A status would have to be filed within one year of completion of the FCC rulemaking proceeding.

As proposed by the CBA, applicants would be required to demonstrate that their stations would not cause interference within the Grade B contour of analog TV service authorized as of the filing date of the Class A application. They would also be required to show that interference would not be caused within DTV service areas resulting from the technical parameters in the FCC's DTV Table of Allotments. Applicants would also have to demonstrate that interference would not be caused within the protected areas of authorized LPTV and TV translator stations (translator stations rebroadcast the programs of primary TV stations). Class A stations would be protected against interference within their LPTV service areas by subsequently filed analog TV and DTV service application proposals (other than proposed DTV facilities consistent with a station's DTV allotment parameters). The CBA also proposes higher power levels for Class A stations and that such stations be entitled to convert to digital operation on their channel or seek a second channel for digital operation, provided interference protection requirements are met.

VI. The Community Broadcasters Protection Act of 1999

The bill before you H.R. 486, the Community Broadcasters Protection Act of 1999, would help preserve those low power TV stations that have served the public interest by providing a local broadcast TV service to their communities. As I described earlier, the Federal Communications Commission has long sought to nurture the low power TV service, recognizing the significant contributions it can make to local communities. I firmly support the objectives of the proposed legislation as a means of protecting those low power stations that have made such contributions to their communities. By affording these stations Class A, protected status, these local community broadcasters can continue providing the local programming that makes them so special to their communities. It will provide these stations the certainty they need as we enter the digital age.

In pursuing this objective, the proposed legislation seeks to craft eligibility and procedural provisions to establish Class A service in a manner that does not unduly disrupt existing television service or the transition to DTV. Let me turn to three particular provisions of the bill that may warrant further examination by the Subcommittee.

First, the legislation provides that the FCC grant "certification of eligibility" during the pendency of its rulemaking proceeding to prescribe regulations to establish a Class A service and that the contours of LPTV licensees must be preserved until the related Class A applications have been resolved. These provisions appear to direct the FCC to protect the existing service contour of an LPTV station once it certifies the station licensee to be eligible to apply for Class A status. While these provisions in the legislation would give early protection to LPTV stations eligible for Class A status, they could also constrain the FCC from authorizing new analog television service for which applications are pending and that was protected in the development of the DTV Table of Allotments. Station licenses sought by these applications will be awarded through the competitive bidding process. The legislative provisions could also affect the transition to digital television by constraining the FCC from granting DTV applications proposing facilities that deviate from stations' allotted parameters (location, antenna height and power) in the DTV Table of Allotments, including site relocations or other changes necessary to resolve unforeseen problems.

Second, the bill would appear to prevent the FCC from using competitive bidding in deciding among mutually exclusive applications where one or more of the applicants is a "qualified Class A licensee or a translator rebroadcasting the signal of a primary service station within its designated market area." In these situations, the bill would require the FCC to give the applicants at least 60 days to develop an engineering solution so that the applications are not mutually exclusive. If this proved unsuccessful, the Commission would be required to devise a system for selecting among the competing applicants other than the auctions process that would maintain "equal opportunities" for Class A and translator applicants and that would encourage localism and diversity.

I am concerned that this provision would be difficult to implement and could lead to delays in the authorization of broadcast service. Congress granted the FCC statutory authority to use auctions in the broadcasting context in the Balanced Budget Act of 1997. Prior to this, the Commission used a comparative hearing process to select among competing broadcast applications. Our long experience with this process taught us that auctions are a much more efficient and cost-effective method of assigning spectrum in cases of mutual exclusivity than any other method, including comparative hearings. The Subcommittee may wish to keep this experience in mind in considering the provision of the bill dealing with the FCC's auction authority.

Finally, the bill provides that there will be no ownership restrictions on Class A stations. While unrestricted ownership was appropriate for the emerging and secondary LPTV service, it may not be appropriate for those LPTV stations reclassified as Class A facilities, with primary frequency use rights comparable to those of full-service broadcasters. The bill appears to contemplate applying most of the Commission's Part 73 regulations—those applicable to full-service broadcasters—to Class A stations. The Subcommittee may wish to consider whether the ownership provisions of that Part should also be applied to Class A facilities.

VII. Conclusion

I want to close by restating Chairman Kennard's unequivocal commitment to creating a Class A LPTV service. He firmly believes that affording qualifying LPTV stations with substantial and enduring protections consistent with the digital television transition will serve the public interest and has urged his colleagues at the Commission to promptly address this matter in connection with the CBA petition now before the FCC.

Thank you, Mr. Chairman, for the opportunity to appear before you today.

[The prepared statement of Hon. William E. Kennard follows:]

PREPARED STATEMENT OF HON. WILLIAM E. KENNARD, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

I am a strong supporter of Class A status for low power television (LPTV) stations. LPTV stations offer their communities significant services. They often function as a community's only local television station and commonly serve as exclusive outlets for foreign language and other special programming for unserved and underserved audiences. Many LPTV stations are owned by small businesses, minorities and women and thus help to enhance the diversity of ownership in the broadcast industry. I therefore commend the House Subcommittee on Telecommunications, Trade, and Consumer Protection for holding this hearing and the efforts of Representative Norwood (R-GA) and others to assure primary status for qualifying LPTV stations.

As long as these LPTV stations are regarded as secondary operations, they may be vulnerable to displacement, especially in major markets. Moreover, even those stations that are not displaced may encounter difficulty in accessing capital for programming, equipment, service and infrastructure improvements while they retain secondary status.

For these reasons, and at my direction, the Commission sought public comment in 1998 on a petition for rulemaking submitted by the Community Broadcasters Association. The petition proposed, as does Representative Norwood's bill, H.R. 486, that we create a new Class A television station class for qualified LPTV stations providing substantial local programming. This Class A status would avoid the displacement of such stations by affording them primary status as television broadcasters as long as the station continues to meet the requirements for a qualifying low power television station. The Commission is currently reviewing this matter and I expect that it will adopt a Notice of Proposed Rulemaking in the near future. I have urged my colleagues to issue proposed rules that will make clear that LPTV stations will survive and continue to provide broadcast service to their communities.

Meanwhile, I am pleased that the Subcommittee is holding this LPTV hearing and I offer it the Commission's assistance as it addresses this important telecommunications policy matter.

Mr. TAUZIN. Thank you, Mr. Stewart. Indeed, we have Mr. Kennard's statement, and it is very strong. Thank you, sir.

The Chair is now pleased to welcome Mr. Jim May, Executive Vice President of The National Association of Broadcasters. Mr. May.

STATEMENT OF JAMES C. MAY

Mr. MAY. Thank you, Mr. Chairman. When the FCC first began licensing low-power television stations in the 1980's, it did so with a specific and limited role in mind. It saw these stations as serving a small niche of very local interest and saw them as a secondary service to full-power television stations. The Commission granted neither the obligations, nor the privileges, of full-power licenses. Low-power stations owner understood that when they got their licenses. Yet, even with that difference, many low-power stations have become extremely popular, as evidenced by the comments on this panel today and the more than 2,100 that are on the air today.

Enter the advent of digital television. This new technology is already beginning to provide viewers with the best quality picture and sound in television history. But the transition to digital is a very complicated process. It has required an almost magical fitting in of nearly 1,600 new digital stations between and among existing 1,600 full-service analog stations, serving virtually every portion of the country.

And while the Commission has worked hard to make this transition a technical reality, it is still very much a work-in-progress. The vast majority of these duplicate stations have yet to be built, yet to be engineered, yet to be tested, or put on the air. Fifty-seven digital stations are on the air now; four network affiliates in the top thirty markets will be broadcasting in digital by November of this year. That means the overwhelming percentage of stations have until May of 2002 to go through that process. And the transition won't be complete until 2006. Please keep those dates in mind.

Given the complicated matrix of digital television assignments, the FCC has made a sincere attempt to preserve service for as many low-power stations as possible. The Commission even expanded the core spectrum for DTV by five channels per market, in part, to relieve the pressure on low-power stations. In the end, the vast majority will be maintained in the digital era.

Now, with this background in mind, let us place the elements of H.R. 486 against the reality of that transition. H.R. 486 does several things. First, it makes many LPTV's primary status within 5 months of enactment. The qualifications for eligibility are minimal and it would appear that most LPTVs would qualify. It then virtually mandates the Commission grant them primary status, a status that gives them equal standing with and against full-power stations.

The bill also protects the current low-power service area, while they are applying to become Class A primary stations. And perhaps most troubling, the bill further limits the protection that full-power stations or translators have in their digital build-out to an exceedingly narrow timeframe.

What is the end result? We believe that broadcasters and the Commission will not, as Mr. Stewart said, have the flexibility that they need to make sure the digital transition occurs without causing serious disruption and interference.

The bill also truncates the decisionmaking process by creating almost instantly a new television service with protections that are equal or exceed those of full-power stations and their translators. In short, it locks in LPTVs and their service areas before the DTV

system is up and running and any changes are taken into account. Remember, it will be 2002 before we truly know which changes are going to be required.

Clearly, then, the biggest issue, is one of timing. No one can predict with certainty today what modifications or changes will be needed to make in the next few years, as the digital transition moves forward. That is why we cannot make decisions now about LPTV stations.

Further, we can think of no circumstances where low-power station should have primary status over any current full-power station or its digital equivalent. We also believe LPTV stations should not have primary status over needed modifications to full-power stations, either operating or planned. And we simply don't know if there will be a need to make alterations to digital rollout as we go forward. We respectfully suggest that any of these decisions be put off until the transition is further along, when we have more knowledge of potential interference.

Mr. Chairman, we are not arguing that LPTV stations do not provide an important service to viewers, and we applaud the efforts of the commission to preserve as many LPTVs as possible during the transition and into the future. We are suggesting that this Congress has mandated a multi-billion dollar transition to digital, which American broadcasters have committed huge resources and effort forward to.

Mr. Chairman, let me note that the Commission has before it a petition for rulemaking on this very issue. It is our understanding that the FCC will act shortly to issue a notice seeking comment on these very same proposals. We would expect the Commission to continue to do all it can to maintain as many LPTV stations as possible during the transition and beyond. And we would hope that the committee would allow that process would go forward before intervening. Simply, I am not sure the Commission needs any new authority.

Let me conclude, however, by saying that we pledge to work with this committee on a critically important issue. We understand the sponsors' interest in seeking a resolution and pledge our best efforts to find an agreeable solution.

[The prepared statement of James C. May follows:]

PREPARED STATEMENT OF JAMES C. MAY, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. Chairman and Members of the Subcommittee, my name is James C. May and I am Executive Vice President of the National Association of Broadcasters, on whose behalf I appear before you today. NAB appreciates the opportunity extended by the Chairman to testify before this Subcommittee on H.R. 486, proposing a "Community Broadcasters Protection Act" intended to preserve low-power television stations that provide substantial local programming to small communities throughout the nation.

NAB appreciates the sponsors' concerns for the many low power television stations that have been providing targeted or niche programming in the "interstices" of full service television service as the massive transition of this country's broadcasting system to digital technology begins.

The digital revolution now upon us has extended to every form of technology in our nation and indeed in the world and is being felt in every sector of American life and business. It is enabling all Americans, no matter where they live, to participate in technological wonders not even dreamed of 20 or 30 years ago. It is exploding options for all Americans in their work, their schools, their continuing education, their investing, their hobbies, their art and their entertainment. Digital technology revolutionized the massive upgrade in television technology being planned

for this country's free over-the-air broadcasting system. Digital technology, the basis of our DTV standard, has expanded the number and types of television programming and television services that *all* Americans will be able to enjoy *for free*. Congress and the FCC have, in concert with the broader television industry, devised a plan to transition this nation's television system—long the envy of the world—to the wonders of digital *with little if any disruption of service to the public*.

While the changeover in technology is revolutionary, total and necessarily involves replacing virtually all broadcast equipment and facilities as well as all consumer televisions, the public should not, under the FCC's carefully constructed plan, have their daily primary television service interrupted. While consumers will have to purchase new television sets, the FCC's plan allows them to do so over time, thereby affording them the benefit, over the length of the transition, of falling prices and the luxury of proceeding according to their own timetables—while continuing to see their familiar programs without interruption.

However, this consumer-conscious plan for the digital television transition was not arrived at easily, nor is it yet perfected. It is, in the truest sense of the term, a work in progress. It has required an almost magical fitting in of over 1700 new digital television service areas in between and matching up with the over 1700 existing full service television stations, serving virtually every area of the country—and doing so in *less spectrum* than today's service occupies. These temporary "duplicate" stations are just now beginning to be built, re-engineered, negotiated with neighboring stations and with local community groups, tested, adjusted and, finally, broadcast to the very same audiences expecting their service.

It was truly an extraordinary accomplishment to match every television station in the country with a same-service-area-replicated digital station while the to-be-replaced analog stations continue to operate pending consumer replacement of hundreds of millions of television receivers. This was achieved (to a great extent, but not perfectly or completely) after years of planning in order to preclude disrupting, to the greatest extent possible, consumers' highly valued and highly utilized free television service.

But, given the extreme congestion of population and therefore stations in many parts of the country, the DTV plan could not achieve its primary goals of service area replication for every full service station and minimization of interference to existing television service *while taking into account the secondary low power and translator services*.

The FCC did adopt certain measures in its DTV Orders to ameliorate the impact of the initial DTV Table of Assignments on low power stations. But only so much could be done in this regard—until all full service stations have perfected their DTV assignments.

Accordingly, Members of the Committee have expressed a concern that the low power service be protected as much as possible, in the transition to DTV.

While we at NAB would like nothing more than to be able to acquiesce to immediate accommodation of a certain class of low power stations within the digital transition, we can see no way to do so *at this time*—while we are in the midst of this fragile and just-beginning DTV transition. To try to do otherwise at this time would do a grave disservice to all consumers and to the digital television transition so long in the planning. NAB will do its best to work with the Subcommittee to try to fashion legislation that will not disserve the digital transition but will seek to preserve certain low power television operations at the earliest possible point in the digital transition.

That said, I must note that the low power television service was *created* as a secondary service, to supplement full service operations, not to supplant, or vie for spectrum with, the broad-based television service that has always been the foundation of television in America. Low power operators applied for their licenses, and began their operations, with full knowledge that they must give way for full service operations. NAB appreciates that low power operators want their service to their audiences to survive in the digital transition, but we ask this Committee *not* to cause that to occur at the expense of *full* DTV service for *all* consumers.

We in fact have similar concerns for the television translator service that extends the broad-based television service, including network television service, to thousands of rural Americans. The TV translator service, like low power operations, is a secondary service which similarly could not be protected or included in the initial round of DTV assignments. To do so for translators or LPTVs would have compromised the achievement of the service goals for the DTV Table, namely DTV replication of every existing full power television service area and minimization of interference to existing NTSC television service, which will be the primary free television service for most consumers for several years. Once, however, all full service DTV stations are substantially settled, many if not most low power *and* TV trans-

lators will be able to be accommodated in their NTSC mode and then with DTV service as well. Much can be done to these ends long before the end of the transition. Once all full service stations are on-air with DTV in 2002, the Commission will be able to evaluate how many LPTVs and translators can be accommodated with replacement NTSC channels for those bumped and second (DTV) channels for those low power stations seeking DTVs (rather than switching to DTV at the conversion). Once the conversion to all-DTV occurs in 2006, the NTSC channels within the core DTV spectrum will be freed-up and there should be ample room for all LPTVs and translators to have DTV homes as well.

To further these ends, and to explain to you the specifics of my concerns with (and possible amendments to) the bill before us, I would like to proceed to the terms of the legislation itself.

First, this legislation appears to seek two goals, which taken together pose challenges for the DTV transition that simply cannot be accommodated at this point. One, the bill seems primarily aimed at “permanently” preserving certain low power stations by creating a new class of stations with “primary” status, which could not be displaced by any other user, including full power DTV stations. Two, the bill also appears to grant a preference these “new” LPTVs for new DTV licenses over translators and full service DTV modifications alike. The entire bill, including a provision for Class A stations to be strongly considered for an “advanced television” license, would be placed in the section of the Communications Act (§ 336) that concerns “advanced television” services and licenses for the new service. This legislative bias in favor Class A DTV licenses, however, comes without regard for the DTV assignments and needed modifications of full-power stations and cannot be squared with the rollout and tweaking of full service DTV facilities. I urge this Subcommittee not to direct action that might compromise the perfecting of full service DTV assignments so long under construction and benefiting so many consumers.

Second and possibly the major improvement that could be made to this bill, is the time within which the Commission is to “prescribe regulations” creating Class A low power licenses. The bill currently provides for FCC regulations “within 120 days” of enactment. This time period could direct the creation of new permanent Class A licenses *before* the vast majority of full service stations will have filed for their DTV construction permits, before they have had a chance, to re-engineer their facilities, if needed, change channels, if needed, join with other broadcasters to locate and construct a new joint tower, if needed, or otherwise perfect, or maximize (as is contemplated in the FCC’s rules) their DTV facilities. The result well could be Class A low power station’s trumping needed modifications for full service DTV stations and thus compromising the DTV transition in its infancy. We respectfully suggest that this be considered *only some time after* all initially-eligible DTV licensees are granted DTV licenses by the Commission.

Third, we would recommend, for the same reason, that any legislation, with appropriate timing, would specifically provide that in no event will the Class A licensee have primary status as against any initially-eligible DTV station or any existing NTSC licensee.

Fourth, the bill only provides interference protection to Grade B contours of existing stations or to DTV service areas provided in the DTV Table or modified *before* the *filing* of the Class A application. Again, timing is the major problem. To avoid disruption to the perfecting of full service DTV service to the public, the Class A’s simply should not have primacy over *any* full service DTV modifications or over any *pending* NTSC facilities modifications.

Fifth, we do have serious concerns over the bill language potentially allowing Class A low power stations to raise their power levels in accord with the operating rules for full service stations. We believe that low power must remain low power and be constrained by the power limitations applicable to all low power stations.

Sixth, with regard to the bill section on issuance of advanced television licenses, NAB strongly believes that there should be no built-in bias toward Class A DTV licenses over those for TV translators. We also strongly believe that there should not be *any* possibility, as *there is* in this bill, that Class A DTV applications might trump full service DTV assignments *or yet applied-for modifications* thereto. Thus, timing is again the main stumbling block. But so too is the preference for low power DTV assignments over those for full service-extending translators, which serve primarily rural consumers *free* broad-based television service.

Seventh, if and when Class A’s are to assume the permanency of primary stations, they should be required to adhere to the same restrictions as full service stations. In particular and specifically raised in this legislation, Class A licensees should be subject to the same ownership restrictions as full power television stations.

Lastly, the bill section that addresses “interim qualification” of out-of-core LPTVs, again depending on timing, should not permit such LPTVs’ finding a home within

the core DTV spectrum to override needed modifications of full service DTVs by “automatically” granting Class A primary status as against future modifications by full service stations.

As is clear from the above-recitation of substantive problems with H.R. 486, NAB’s main problem remains with the timing of the creation of new Class A low power stations. Knowing that this Chairman and this Committee are committed to the best and full deployment of digital television for the benefit of *all* consumers, NAB urges you to postpone further action on this bill until the DTV dust has clearly settled. Once it has, it should be the first and top priority of the FCC to accommodate *both* low power stations and translators in the brave new DTV world.

Let me close by noting that in our view the FCC requires no new authority to aid LPTVs in the midst of the DTV transition, in the same ways this legislation suggests, or otherwise. In fact, the Commission has before it at this very moment a petition for rulemaking along the same lines as the legislation before this Subcommittee. It is our understanding the FCC will act shortly to issue a Notice seeking public comment on these same proposals. We expect the Commission will continue to do what it can for low power stations, consistent with its responsibilities for the DTV transition.

Mr. Chairman, again I thank you and the Subcommittee for inviting my participation in this hearing.

Mr. TAUZIN. Thank you very much, Mr. May.

The Chair is now pleased to welcome Dr. Arthur Stamler, the station General Manager at a LPTV station, WAZT, the Waltz TV, LPTV, in Woodstock, Virginia. Mr. Stamler, for your testimony, sir.

STATEMENT OF ARTHUR D. STAMLER

Mr. STAMLER. Thank you, Mr. Chairman. It is good to be here today. I would like to also introduce my wife, sitting behind me, Virginia, who is my co-partner in WAZT. We both started it together some 15 years ago.

I started my career in broadcasting 47 years ago in Boston. It is all I wanted to do, is to be in broadcasting, and I was pleased to see that my dream had come true. And my entire professional career has been in broadcasting. I was a department head at the National Association of Broadcasters in the late 1950’s and early 1960’s, when the then-Chairman of the FCC called television a vast wasteland.

I didn’t believe it then, and I sure don’t believe it now. There are television stations who are every bit professional. And WAZT considers itself to be professional.

Over the course of years, I have seen major changes in the broadcast industry when FM came in; when UHF came, and the VHF broadcaster said was going to put them out of business; when color television came in and black and white went out; when cable systems came along; when satellite technology came along, and now direct television to the home. There are changes that will continue and the industry has to roll with the changes.

And to protect an existing industry, over what may or may not happen in the years to come at the expense of industry that is serving the American public, I believe is not the intent of the Congress when it established it or the intent of the FCC as it supervises it.

WAZT is a primary source of news, and information, of spiritual enrichment, of local events, of local school sports, and that very special, nothing-like-the-Washington-DC weather forecast, even though we are only located 100 miles west of DC.

Mr. TAUZIN. Do you need a pair of beavers by the way?

Mr. STAMLER. Excuse me, sir.

Mr. TAUZIN. I wondered if you could use a pair of beavers; we have got a little problem I think.

Mr. STAMLER. To thousands of viewers in our area, we are their local television station, and the term "low-power" doesn't mean anything at all. It is so vital for any television station, when operating, to present to its viewers the ability to see quality as they click through the channels with that remote control. It doesn't make any difference whether they are full-power or low-power. The stations are on the air to do something.

Our station went on the air with 49 watts. That is less than a 60-watt lightbulb. And when it when on the air, we were every bit as professional as our neighbor full-power television station 60 miles down the road in Harrisonburg. As a matter of fact, they have become quite friendly with us and treated us equal. We are members of the Virginia Association of Broadcasters. And the full-power television stations treat us as equal.

We are members of the National Religious Broadcasters because our basic format has religious programming. It is the only religious television station from the Maryland line to the West Virginia line for 150 miles through the Shenandoah Valley. It fills a niche that is so needed because that area is called the Bible Belt in Virginia. So we found something that the people needed and we give it to them. In addition, we have a fully staffed local news department. We have 21 local preachers that are on the air providing their programming for our local area.

This becomes a forum for each of the communities for the county government, for the town government, for the city governments.

I mentioned a few moments ago that we are members of the National Religious Broadcasters Association. This committee should know that WAZT was named "Television Station of the Year" in 1998. And that is in full competition with a number of full-power television stations around the country. So, according to those professionals, we must be doing something right.

Our investments are hard to come by because we are temporary; we are secondary, and I equate that word with temporary. The bank looks at us and says, "How long will you be in business? Why should we give you money to buy a new piece of equipment?" Mr. Chairman, we buy the best second-hand equipment you can buy. We would like to buy first class.

Let me complete with just two brief sentences. There is an old hymn that says, "We've come this far by faith."

And I would like to know that we have some blessed assurance that we can continue. Thank you.

[The prepared statement of Arthur D. Stamler follows:]

PREPARED STATEMENT OF ARTHUR D. STAMLER, GENERAL MANAGER, WAZT-LPTV

My name is Arthur D. Stamler. I am the Managing Member of Ruarch Associates Limited Liability Company, licensee of Low Power Television Station WAZT, Woodstock, Virginia. Let me first offer congratulations to this Subcommittee and to the Congress for its foresight in the establishment of the Low Power Television Service nearly twenty years ago. What had been envisioned then has come to pass now—television media to bring local service to underserved areas and markets throughout the United States. When I categorize areas I specifically refer to locations that either because of remote distances from major communities or terrain shielding preventing local reception were unable to have local program choices. And when I categorize markets, I mean the very specific publics that prefer narrowcasting linguis-

tically or topically to meet local desires. In the lptv industry, WAZT is referred to as a pioneer broadcaster. Our station started service in 1985 after a two year building program. WAZT, then W10AZ, applied for and received a construction permit and license to serve greater Woodstock, population about four thousand, within the County of Shenandoah, then with a population of less than 18-thousand people. Our granted power was 49 Watts, less than the power of a light bulb. But we were television broadcasters, and went to work to make W10AZ the best local television station money would buy. But no bank would provide any funds on loan, and monies received from the sale of our home were insufficient, so my wife and I set out to encourage local investments. We were fortunate to attract investors from the local area: a dairy farmer, a farm implement dealer, a retired federal employee, a physician, an accountant and several others. We determined one thing from the very outset, that is, we would be professional and local from the very first day. And we have had a local newscast every weekday since the station went on the air, even with 49 Watts.

My dreams of operating as a professional television station have never wavered. But the ability to do it has been at tremendous personal cost, financially and healthwise. My wife and I went for more than three years without a paycheck, borrowing against savings, life insurance, and even credit cards as a last resort. WAZT existed for more than a year while the local cable system refused to carry the station, so our 49 Watts had an audience that retained rabbit ears. Our staff learned the television business on the job. Without a budget to hire professional television people, we trained them while they worked, never had to go outside of the Shenandoah Valley for staff. Gradually, one piece of used equipment at a time, we added and upgraded and improved our facility. Public outcry demanded that WAZT be placed on local cable, and it finally was. Our philosophy was then, and is now, that any viewer should be able to click on a remote control and not be able to tell the difference between any station or satellite service and WAZT. Our engineer used a lot of tape and bailing wire and imagination to keep us on the air and looking good as we moved from crisis to crisis. We were able to seek and find available channels in adjacent communities, and received licenses to serve them as well, expanding our coverage of adjacent communities and enlarging the scope of our news and information. On the occasion of our fifth anniversary, we invited the Low Power Television Branch of the Federal Communications Commission to come visit this station, the closest to Washington, D.C. They came. Three vans full. Most of the personnel had never been in *any* tv station, let alone a low power facility. They learned what the business they were regulating was all about, a very valuable trip. I would like to extend the same invitation to the members of this Subcommittee and staff as well. Come see what Congress proposed and what we have composed. It is as much a television station as anything you could shake a remote control at. I would be amiss at this juncture if I did not express my appreciation and gratitude to the staff at the Low Power Television Branch, especially the former Chief, Keith Larson who believed in the Congressional LPTV mandate and watched us toe the line to comply.

WAZT has chosen to provide our communities of license with programs keyed to spiritual enrichment. We are located in what has become known as the Bible Belt in Virginia, but there were no religious television stations serving that concept. As a matter of fact, from the top of the state just North of Winchester all the way to Roanoke, some 300 miles away, there was only one television station, a network affiliate. The area is isolated from the Washington area by the Blue Ridge, so DC stations were received with great interference, if at all. WAZT filled a void and continues to be the only local independent station providing a forum for advertising, community events, area sports, political debate, locally produced lively arts, plus two thirty minute actuality filled news reports each weekday evening, one at 5:30 and one at 9:00 PM. WAZT is not exactly a powerhouse now, even though some high band VHF stations can apply for as much as ten thousand watts. Our 670 Watts seem to be doing an adequate job in Shenandoah County. WAZT, with five surrounding translator stations, operates 24 hours a day, seven days a week. It has still been denied cable carriage in three area systems, but we have patience that some day those systems may relent. More than two million dollars has been invested in bringing WAZT to its current posture. Now, we are looking at converting our on-channel facilities to a digital format in keeping with the current timetable proposed by the FCC. That will mean duplication of virtually all production and transmission facilities plus an extensive and expensive engineering consultation and installation. That will mean not less than a million dollars for a bare bones transition. No business on earth would take on that much debt, knowing that it could be terminated in a heartbeat. No financier knowing of the very secondary and temporary licensing of an LPTV would consider a loan or a lease for new digital equipment. There's an old hymn that says "we've come this far by faith". Now we need

some blessed assurance. I need to go back to Woodstock and tell those 21 local preachers that they will be able to stay on the air. I need to tell my staff of 18 that their jobs are secure. I need to tell my investors that there's pretty good chance their investments are secure. I need to tell my wife we did the right thing fifteen years ago. I need the permanent status that we have desired, and now is within sight, and I promise that my facility will do whatever is needed to see that it happens.

Mr. TAUZIN. With all of the connections that you have got, I didn't want to turn you off, even if the red light was on.

Thank you, Mr. Stamler.

We are now pleased to welcome Mr. Michael Sullivan, Executive Director of Community Broadcasters Association of St. Cloud, Minnesota. Mr. Sullivan.

STATEMENT OF MICHAEL SULLIVAN

Mr. SULLIVAN. Thank you, Mr. Chairman. I am the Executive Director for Community Broadcasters Association. That is the national organization that represents the low-power television in the country. I was going to, as you can see, in my statement, sort of brag, or really explain what low-power television is—and I see you smiling—HTV in Houma, Louisiana. Mr. Deal has talked about channel 43 over in Dalton; Mr. Oxley has already talked about channel 67; Mr. Klink has all that he can say in terms of western Pennsylvania and where high school football is king, plus some of the other programming that is provided by Ron Bruno, to my left here.

You all know you are learning today, if you didn't know before, what low-power is, what low-power television can do. The big threat—and you know that we are secondary status. We are not here today, Mr. Chairman, to complain about digital; we are not complaining about the public safety allotments; we are not complaining about the commercial allotments. The Congress directed the Commission to do that, and in a lot ways I think it is sound public policy. We are not here to argue that.

Mr. May referred to the impact of what this has done, and that is, considerably shrink available spectrum, available for broadcast television. And that has probably created the single greatest need for primary status, because what happens is Mr. Deal's constituent or your own constituent, Mr. Chairman, basically they not only have gone through the bumping process that we just had with those three other incidents; they risk tomorrow, the following day, and every day in the future, getting bumped not only once, but twice, and three times.

Mr. Oxley's constituent, for example, has just re-channelled 67 and he is now FOX 25 in the Lima, Ohio market; put a \$100,000 to do that; he has no protection whatsoever, about not getting bumped again. Mr. Sawyer was here talking about a full-power station just vacating that Akron market, which is understandable. Maybe that sounds rather harsh on my part, but it basically vacated the Akron market to go to the "Big Apple" of that television market, which is Cleveland. When you can go to a market of 1.4 million versus the couple of hundred thousand of Akron, Nielsen is much better to you when you are there.

And television is about numbers; television is about Nielsen, and one of the special things about low-power television is that we are

not bound to ratings because we weren't created—Jim says it very well; we were really created as a supplemental television service. But as it is supplemental, it means we translate that into basically into pockets of underserved. These pockets of underserved exist both in rural and urban communities. The District of Columbia or the Washington Metro is a wonderful example of that. There are two Spanish language stations here in the Washington market, channel 48 and channel 64. They are both low-power stations. There are 300,000 Hispanics in this market. They need some security, and I think all of the community broadcasters believe that number of Hispanic people clearly deserve television in this kind of market. Where I come from 300,000 folks is a half a congressional district. You know, to me those are big-time numbers; those are people who really deserve.

Back to Akron for a moment, what happens, Mr. Sawyer mentioned that the station isn't everything it could be or should be; we know that. The owners of that station know it. About a million dollars separates it from where it is today and to be truly a full-service station. How can they do that with the threat of being bumped tomorrow, the next day, and the next day?

We have other problems, too. If we are going to stay in television, we have to transition to digital. We are told that is very expensive. How do we do that?

Last point, no matter how good you feel about low-power television, if low-power television is going to mess up digital, you can't consider it and we shouldn't advocate it. Very simply, we want to believe that section 7 in the Norwood bill is real, is serious, creating no interference for full-power digital stations. There will be no Class A if they create interference.

Thank you; I see the red light.

[The prepared statement of Michael Sullivan follows:]

PREPARED STATEMENT OF MIKE SULLIVAN, EXECUTIVE DIRECTOR, COMMUNITY
BROADCASTERS ASSOCIATION

Chairman Tauzin and members of the Subcommittee, we are very pleased to be here today. We are grateful to you, Mr. Chairman that you would provide community broadcasters throughout the country and other interested parties the opportunity to examine and discuss the issue of changing the "Regulatory Classification of Low Power Television licenses."

The Case for Primary Service Designation

As you know, Mr. Chairman, the current regulatory classification of low power television is one of secondary status. Secondary service simply means that when the Congress or the Commission designates spectrum used by LPTV service for other purposes and classifies those purposes as a primary use of spectrum, the secondary service is displaced. If no other spectrum is available the station simply goes dark. Some will argue that those are the breaks. The licensee should have understood the rules before they built the station. They took the risk with their eyes wide open. Now let them take the loss.

Others go a step further asking, "who are these folks?" They continue, "when we're surfing the channels, we thought television was television."

If you are in Dalton, Georgia, it's station WDMN providing over 15 hours of original local programming per week in five counties of North Georgia. If you are in Hopkinsville, Kentucky it's station WKAG serving most of western Kentucky with significant local news and community affairs for which there is no competitor. If you are in Houma, Louisiana, it's H-TV providing the only regular local television programming for that community of 100,000 population. H-TV doesn't just play television, it originates 12 separate local programs each week for that community. If you are in Lima, Ohio it is Fox-67 which was recently displaced and is now Fox-25. Local programming is also their signature as it is also in New Castle Pennsyl-

vania where high school football is king. If you are in Reidsville, North Carolina, Plano, Illinois or Laramie, Wyoming it's low power television making a difference for the citizens of those communities. If you are here in Washington D.C. as we are today, it's channels 48 and 64. These are the only two Spanish language stations in this market serving the estimated 300,000 Hispanic people in the Washington Metropolitan area. If you are in Hartford, Albuquerque, Miami, San Diego, San Francisco, Portland, Denver, Salt Lake or Milwaukee there are low power Spanish language stations in those markets. In fact, it is estimated that between 40-50% of the Spanish language television stations in the country are low power stations. But that should be no surprise. The low power service is a community based not market based television service. Its purpose is not to compete with full power service but to serve the underserved in both rural and urban communities.

What we really see in low power television today is a FCC program that worked. When the service was created in 1981, did we know it was going to work? Did we know that low power television would find a niche—maybe not in every market but in every one of the 50 states of the United States? Did we know at its inception that many of these stations, while low in power, would meet every measure of a full service television station in their niche markets?

I believe the answer to these questions is no. But there was much more that we didn't know.

Did we realize during the decade of the 80's that television spectrum would be reduced by 108 megahertz—a full 18 channels? Did we realize then that the 1990s would bring the full implementation of DTV where every full power station would receive a second 6 MHz channel? This was more than 1700 new allotments Mr. Chairman, how could have these low power licensees—even those with their eyes fully opened—envisioned such radically changed circumstances?

What we did know is that secondary service could mean displacements. But not even the best low power television historians can list five stations during that decade that were displaced and not successfully rechanneled.

The recent DTV, Public Safety, and Commercial spectrum allocations have changed that dramatically. From an environment where one might say we had spectrum abundance we are now challenged with significant scarcity. This has change considerably the investment environment in community television.

We're here today because we want you to know what impact this change has on our communities and operators. Here are three examples.

First, just a week ago in Akron Ohio, the Mayor's Advisory Board had a town meeting with local citizens listening to input on ways to improve their community in the next century. 100% of the local citizens attending wanted to see a television station back in Akron, a community of over 200,000. Their full power station left town for Cleveland, the big apple in that market. The irony of this story is that there is a television station in Akron right now. It's WAOH. LP owned by local residents who want to improve their service to the Akron community. But to become a truly full service station in that market, WAOH would have to make a capital investment of approximately \$1 million. By many measures, that is a modest investment. But with the threat of future displacements and the almost non-existence of other available spectrum in that market, that which could be a modest investment becomes almost foolishly risky.

Second, I cited stations in Dalton, Lima, Houma, Reidsville, New Castle, Albuquerque and many others. The Commission is in the process of granting over 600 new assignments to those displaced by DTV, Public Safety and Commercial allotments. So long as these stations are secondary, they can be displaced again and again and again.

Yes, Dalton, Lima, Houma and Plano low powers made way for DTV and full replication of every full power licensee in their markets. Everyone of these stations need the Norwood/Klink bill and they need it before they are displaced again.

If that isn't enough, low power television has a third challenge. We also have to make the digital transition. Without investment security and without a reasonable means to raise outside capital, this transition for community broadcasters will become hugely difficult.

Sherwin Grossman, CBA's President, who has both developed television stations and chartered banks, maybe summarized today's investment environment best. He said, "If I had a loan officer who made a loan to a low power station today, I'd fire him or her on the spot." He probably just knew that if he didn't fire him, the bank examiner would close the doors of the bank.

Impact on DTV Roll-Out

Now even if all of us agreed that there is a compelling case for primary service designation, CBA realizes it won't happen if it jeopardizes DTV implementation.

For this reason we become both mystified and deeply troubled by the allegations of our fellow broadcasters at NAB. Here is a sample.

- By giving LPTV stations primary status, the FCC will not be able to assure consumers that the transition to digital by full-power stations can proceed interference-free... It makes no sense to tie the hands of the FCC by preventing them from turning off LPTV service where interference is occurring.

- Full power broadcasters are working hard to meet the aggressive timetable laid out for digital. Passage of legislation could threaten to slow down that transition further.

- Any LPTV amendment would threaten to further complicate an already complex transition to digital television.

- If that (legislation) were to occur, the transition to digital itself could be in jeopardy. Clearly, increased interference to new digital services would be disruptive.

- (If legislation is approved) it could block efficient roll out of digital TV.

CBA believes these assertions are very serious. But, CBA and many others also believe that Sec (7) No Interference Requirement is clear and precludes a threat of interference. The legislation reads: "The Commission may not grant a Class A license... unless the applicant shows... the license... will not cause interference within... the DTV service areas provided in the DTV Table of Allotments or subsequently granted by the Commission prior to filing the Class A application."

We can only ask, what doesn't this say that it needs to say? As CBA understands this legislation, when an LPTV licensee submits to the Commission a certification of eligibility under the terms of (f)(1) of this legislation, the Commission will neither grant this certification nor preserve the protected contours of the low power station, if such an applicant creates interference within the protected contour of any DTV allotment.

Help us out. How does this place the DTV transition in jeopardy? How does this result in increased interference? How does this slow down? How can this block? How does this tie the hands for the Commission? What does this have to do with assuring viewers interference free digital reception?

We believe the no interference standard assures every full power station in the country full utilization of its DTV allotment. As a practical matter, maybe the Senate Commerce Committee came to the same conclusion when they reported S. 1427, a companion to H.R. 486, last October 1 by a unanimous voice vote. Maybe Chairman Kennard and his engineering staff came to a similar conclusion. In the Chairman's July 27, 1998 letter to Senators he wrote, "Having reviewed this legislation, I have no major concerns with this bill."

Almost no one is a more committed, enthusiastic, and determined advocate of a rapid DTV roll-out than Chairman Kennard. For CBA, it is inconceivable that the Chairman and his staff would find "no major concerns" with this legislation, if there was any serious, credible, documented technical evidence showing that these assertions have merit. If this committee comes to any different conclusion than Chairman Kennard or the Senate Commerce Committee, please advise us immediately and we will work with you on corrective measures.

Mr. Chairman, we want the digital television to work because we want to be part of it. Thank you so much for the opportunity to address the committee today.

Mr. TAUZIN. Thank you very much, Mr. Sullivan. I want to congratulate you on knowing how to talk committee language. I think you have touched every member with that comment.

We are now pleased to welcome Mr. George E. DeVault, Jr., President of Holston Valley Broadcasting Corporation. I understand you own both full-power and low-power television stations.

STATEMENT OF GEORGE E. DEVAULT, JR.

Mr. DEVAULT. That is true, Mr. Chairman.

Mr. TAUZIN. We welcome your testimony, sir.

Mr. DEVAULT. Thank you for inviting me. Holston Valley Broadcasting is one of the handful of television broadcasters which operates both so-called full-power and low-power stations. Our high power, if you can call it that, WKPT is a UHF station, signed on about 30 years ago. We have been the ABC affiliate in our market all these years. Our principal low-power station, WAPK, signed on

in 1991. It has been the local UPN affiliate since that network's inception.

And to add something to what I have given you in writing, I just returned from a conference today of UPN affiliates, at which I discovered that 34 markets in this country receive their UPN programming through LPTV affiliates. WKPT has been a member of the NAB for decades and WAPK a member of the CBA almost as long as that organization has been in existence, and both stations are members of the Tennessee Association of Broadcasters.

As others have done here today, I would like to correct the misconception that LPTV stations have to be tiny facilities with coverage limited to just a few miles and programming that some would call unattractive. Although it is a LPTV station, we operate WAPK like any traditional television station. It telecasts local news, weather, sports, news briefs 5 days a week. It has produced many other local programs: high school baseball games, one college basketball game; we do a couple of parades each year, sometimes more, live local candidate debates. We have produced religious shows. We carried for many years, the programming, the meetings of the city council, in both Johnson City and Kingsport. And we also carry a lot of nationally recognized programs in addition to those from UPN, syndicated shows like "Entertainment Tonight" and "People's Court," and "Touched By an Angel," and a lot of those you see on full-power stations around the country.

We also carry a lot of sports. In addition to those local things, we have carried the Cincinnati Reds, the Charlotte Hornets, ACC football and basketball, SEC basketball, the Tennessee Oilers, and this year the Atlanta Braves. And although low-power stations are not required to do so, WAPK carries some 4 hours of children's educational and informational programs each week, and we are going to multiply the number of hours of such programming we carry, beginning this fall.

Our LPTV station is carried on some 25 cable systems, reaching just under 100 percent of all the cable-connected homes in our eight-county TV metro, and about 85 percent of the cable homes in the full 17-county market. We even achieve modest—and I emphasize modest—Nielsen ratings, and we subscribe to their service, and our schedules are carried in TV Guide, and the local newspapers.

Our concern is the same as the others here today, and that is whether WAPK will survive in the future, because it is a low-power station, a secondary service. We filed a displacement application to move to another channel, and we have learned, in getting the estimates of what it is going to cost, that it is expensive. And of course, one of these days when they turn off the analog, we will have to transition again to digital. We believe LPTV stations, should not face the possibility of having to change channels again, and again, and again; or the possibility of having to terminate their operations all together—just because, sometime in the future, a full-service station who has already built its digital, decides it wants to increase its power, or because the Commission decides, the FCC decides, to license more full-service, or full-power stations, or because someone here in Congress, or at the Commission, decides to allow

pizza delivery trucks, or taxi company radios, to become primary users of these frequencies.

The bill now before the House, H.R. 486, as you know, will bestow primary status on qualifying LPTV stations, once those stations make any initial required moves to accommodate digital television. Interestingly, the obligations that LPTV stations must assume in order to qualify in some ways exceed those that the FCC requires full-power TV stations to meet. The case in point is the requirement that qualifying LPTV air at least 3 hours per week of programming produced within their local markets. Many full-power stations do not meet this standard; they are not required to. The manager of the local FOX affiliate in our markets, a good friend of mine, his stations are operated by one of the largest groups in the country, but he has no local news, and essentially no local programming at all.

As you have heard today, many low-power broadcasters, most we know are good broadcasters, and we believe the power levels that the FCC has allocated for full-service DTV stations will replicate the station's existing analog coverage. The station later decides to apply for more power, and add that small donut of additional coverage. If that interferes with the low-power station, we believe the FCC should have the authority to issue a show-cause order requiring that low-power station to again change channels if, and only if, an alternate channel providing comparable service can be found, and the full-service station creating the displacement agrees to pay all reasonable costs incurred. There is precedence for this in the FM service.

That concludes my remarks. Thank you, Mr. Chairman.

[The prepared statement of George E. DeVault, Jr. follows:]

PREPARED STATEMENT OF GEORGE E. DEVAULT, JR., PRESIDENT, HOLSTON VALLEY BROADCASTING CORPORATION

Thank you, Mr. Chairman. It is my pleasure to represent Holston Valley Broadcasting Corporation, in these hearings today. Holston is one of a handful of television broadcasters, which operate both so-called full power and low power TV stations. Our WKPT signed on almost 30 years ago and has always been the Tri-City, Tennessee-Virginia market's ABC affiliate. Our principal low power TV station WAPK signed on in 1991 and has been the local UPN affiliate since that network's inception. Actually what we refer to as WAPK is a network of four LP stations, each covering different parts of our market and all carrying the exact same programming. WKPT has been a member of the NAB for decades; WAPK has been a member of the CBA almost from that organization's inception.

Although it is an LPTV station, we operate WAPK like any traditional station. It telecasts local news, weather, and sports programs and news briefs five days a week. It has produced many other *local* programs, high school baseball games, one college basketball game, two or more local parades each year, and live local candidates debates. We have telecast locally-produced religious shows. For years WAPK telecast the meetings of the Johnson City Commission and the Kingsport Board of Mayor and Aldermen. Not only does WAPK carry national programming from UPN, its *syndicated* offerings are among the top shows nationally including *Entertainment Tonight*, *Real TV*, *Extra*, *People's Court*, *Touched by an Angel*, and dozens more.

In addition to local *sports* telecasts WAPK has carried Cincinnati Reds Baseball, the Charlotte Hornets, ACC Football and Basketball, SEC Basketball, Tennessee Oilers games, and beginning this year the Atlanta Braves.

Although low power stations aren't required to do so, WAPK carries some four hours of children's educational and informational programs each week.

WAPK's programming is carried on some 25 cable systems reaching just under 100% of the cable-connected homes in the eight county Tri-Cities TV metro and almost 85% of the cable-connected homes in the 17 county total TV market.

WAPK achieves *modest* Nielsen ratings and subscribes to the Nielsen service. Its schedules are carried in *TV Guide* and in all major local newspapers.

Holston's concern today is whether WAPK will survive in the future, because it is a *low power* station and, therefore, is currently classified as a "secondary" service. We have already filed a so-called "displacement" application with the FCC to move to another channel, and we're seeking channels for the three other stations in WAPK's little network, which are also to be displaced. Changing channels is expensive; however, we accept the need to change channels in order to allow the development of Digital Television. At some point before all analog signals are shut off, LPTV stations will also have the expense of converting to digital transmission.

What we believe the LPTV industry should *not* face is the possibility of having to change channels *again and again and again* or the possibility of having to terminate their operations altogether, because sometime in the future a full service station, which has already built its digital facility, wants to increase its power, or because the Commission decides to license another full power station, or because the Commission decides to allow pizza delivery trucks, taxi cab companies, and the like to become so-called "primary" users of these frequencies.

The bill is now before the House, H.R. 486, will bestow "primary" status on *qualifying* LPTV stations once those stations make the required move to accommodate digital TV. The obligations LPTV stations must assume in order to "qualify" in some ways exceed those the FCC requires "full power" TV stations to meet. A case in point is the requirement that qualifying LPTV's air at least three hours per week of programming produced within the local market. Many full power stations don't meet that standard. The manager of the local Fox affiliate in our market is a good friend of mine. His station is operated by one of the nation's largest groups, but his station has no local news and essentially no locally-produced programming at all.

I have immense respect for the NAB; for years I chaired its UHF Committee. In fact if I had accepted the job of Vice President for TV at NAB when I was privileged to be offered it many years ago, I wouldn't be here today, and I'd probably have a much better retirement. My good friend Jim May and the NAB oppose "primary" status for any LPTV stations. I say to Jim and to you: LPTV broadcasters who qualify under the proposal are good broadcasters. In many cases they are more attuned to the problems and needs of their communities than many full service broadcasters.

As both a full power and a low power broadcaster, I *do* offer compromise between the positions taken by these two fine organizations:

The power levels the FCC has allocated for full service DTV stations are designed to replicate such stations' existing analog coverage. If such a station later decides to apply for more power, and adding that small "doughnut" of additional digital coverage would interfere with a qualifying LPTV station, I believe the FCC should have the authority to issue a "show cause" order requiring that LPTV station to again change channels *if and only if*, 1) an alternate channel providing comparable service can be found, and 2) the full service station agrees to pay all reasonable costs incurred including not only the technical expense, but also such items as signage and re-printing letterhead and business cards. There is precedent for this in the Commission's past rulings.

That concludes my prepared remarks. Thank you again, Mr. Chairman, for inviting me to testify at today's hearing.

Mr. TAUZIN. Thank you very much, Mr. DeVault.

And finally, Mr. Ron Bruno, General Manager of WBGN-TV in Pittsburgh, Pennsylvania, who will supplement his testimony with some real interesting stories about Ron Klink.

STATEMENT OF RON BRUNO

Mr. BRUNO. Okay.

Thank you, Mr. Chairman, and thank you, Members of Congress, for the opportunity to speak to you today. I especially would like to thank Congressman Klink and Congressman Norwood, and their hard-working staffs for being the lead co-sponsors of House Bill H.R. 486.

I am Ron Bruno, as you just heard, president and co-owner of the Bruno-Goodworth Network, which operates and does business as WBGN-TV. My partner and co-owner is Ms. Debra Goodworth, one of the few women in this country that is a hands-on-owner of a tel-

evision broadcast property. WBGN-TV is a group of 11 low-power stations that cover the demographic marketing areas of Pittsburgh and Wheeling-Steubenville. We also own the FOX affiliate in Youngstown, Ohio, WYFX, channel 62, a low-power television station.

We began to design WBGN-TV in 1984, when we realized that there was a need for a television voice in the small communities that surround Pittsburgh. When we turned on our first station, we came out of the gates running. Today, our 11 stations provide programming that fills the needs of small communities that our station serve. We produce a daily WBGN-TV regional highlight show that specifically examines an issue or event of interest to each particular community. We telecast local parades, local festivals, local affairs, and events that our community celebrate. By far, our most successful local programming is our award-winning high school, and college football and basketball coverage. The Pittsburgh Post Gazette called us a staple in western Pennsylvania high school athletics.

This fall we will provide over 25 hours per week of local sports coverage. Mr. Chairman, when we cover a high school football game, it is no ordinary day for the kids and the communities who participate. We heavily promote the upcoming contest throughout the week on local radio, newspaper, cable TV, and our own station. Early in the morning on game day, we descend on a football field with productions trucks, support trucks, cranes, camera platforms, thousands of feet of cable, and a crew of 35 people. You only need to see the faces of the coaches and the players when they see all of this commotion being created over their team. They are dazed in wonderment and excitement that a television station is actually going to pay this much attention to their little community, and treat their team like they are in the Superbowl.

One coach said to me that we are the best thing that happened to local high school athletics in as long as he could remember. This coach has been coaching for 35 years. Our games have become so popular that now our local high school athletic directors are petitioning our station to cover their games.

In addition to all of this programming, we provide our community leaders with four—count them—four half-hour blocks of time each week to discuss critical government issues. We air 5 hours per week of educational children's programming, where only three are required. We air 70 hours per week of national news; 15 hours per week of America's Voice Network, and 12 hours per week of syndicated entertainment programming.

We are the home of the Atlanta 10 Basketball Conference; the CIAA Basketball Conference; the Western Athletic Football, and Basketball Conference; the Mid-Atlantic Conference, and the North East Conference, and we are announcing this week that we are the television broadcast of the Pittsburgh River Hounds, a new soccer franchise coming to Pittsburgh. We fully comply with FCC, part 73, rules, even though we are not required to, and we look, act, and feel like any full-power station.

The combination of digital television, public safety, and commercial spectrum allotments has resulted in a devastating blow to WBGN. We have been displaced on all 12 of our stations, including

the FOX affiliate in Youngstown. FCC Chairman Kennard, with the help of staff members like Susan Fox, and Roy Stewart, and Keith Larson, and others, made giant steps in the 6 reporting, in order to help LPTV stations find replacement channels. Unfortunately for us at WBGN-TV, at this writing, we have only been able to find displacement channels for 3 of our 12 stations.

Ms. Debra Goodworth and I are not wealthy people. We come from working-class families, and neither of us has a rich uncle. We have our life savings and financial futures at stake with these stations. Even if we can find replacement channels for each of these 12 stations, we may have to spend up to \$100,000 per station to find new locations, and completely rebuild WBGN-TV. The banks simply will not lend me \$1.2 million for a network of secondary stations. It does not make sense to spend this amount of money, only to know that we maybe replaced again, and again, and again.

We had a reasonable expectation when we started in LPTV of what secondary meant, and what the risks were, but to go to a replacement channel without permanent status at this time would be financial suicide. Low-power stations simply need permanent status. If this legislation is passed, television viewers in western Pennsylvania, and across the country, will reap the rewards of securing community television in their area.

H.R. 486 will give WBGN-TV the capability to continue to provide high-quality, local programming for all of its viewers. Our communities love our station; in fact, they call it their station. Sponsors pay to be on our station because the community watches our station. Local government officials communicate important local issues to the public through the use of our station.

We have done our jobs as responsible broadcasters. Please, allow us a firm ground to operate on. Please pass H.R. 486. Thank you, Mr. Chairman, and the Members of Congress.

[The prepared statement of Ron Bruno follows:]

PREPARED STATEMENT OF RON BRUNO, PRESIDENT, BRUNO GOODWORTH NETWORK
INC.

Thank you Chairman Tauzin and Members of Congress for the opportunity to speak to you today. I would especially like to thank Congressman Charlie Norwood of Georgia and Congressman Ron Klink of Pennsylvania and their hard working staff members for being the lead cosponsors of House Bill HR 486.

I am Ron Bruno President and co-owner of The Bruno Goodworth Network Inc. which operates and does business as WBGN-TV. My partner and co-owner is Miss Debra Goodworth, one of the few women in this country that is a "hands on" owner of a television broadcast property.

WBGN-TV is a group of eleven low power television stations that simulcast and cover the Demographic Marketing Areas of Pittsburgh and Wheeling Stuebenville. We also own the Fox affiliate in Youngstown, Ohio, WYFX, Channel 62 an LPTV station.

WBGN-TV's group of eleven low power stations broadcast our programming from our main station in Pittsburgh whose signal is then repeated by our other ten stations. When conditions warrant, we can break away from the eleven station simulcast and individual stations can broadcast local news, information and entertainment specifically targeted to the communities that they serve.

We began to design WBGN-TV in 1984 when we realized that there was a need for a television voice in the small communities that surround Pittsburgh. When we turned on our first station, we came out of the gates running.

On our first hour of broadcast we were live with our grand opening ceremony from the small town of Beaver, PA (pop. 9,000) where we built our first station—Congressman Klink was our featured speaker. Later that night we covered the biggest

local high school football game in the area. We had a total of four full hours of local community programming on our first day of broadcast. We haven't stopped since.

Today our 11 stations provide local programming that fills the needs of the small communities that our stations serve. We produce a daily "WGBN-TV Regional Highlight" show that specifically examines an issue or event of interest to each particular community. We telecast local parades, festivals, fairs and events that our communities celebrate. By far, our most successful local program is our high school and college football and basketball coverage. The Pittsburgh Post Gazette called us a "staple" in Western Pennsylvania high school athletics. This fall we will provide over 25 hours per week of local sports coverage.

When we cover a high school football game it is no ordinary day for the kids who participate. We heavily promote the upcoming contest throughout the week on local radio, newspaper and our station. Early morning on gameday we descend on the football field with a giant production truck, support trucks, cranes, camera platforms, 1000's of feet of cable and a crew of 35 people. You only need to see the faces of coaches and players when they see all of this commotion being created over their team. They are dazed in wonderment and excitement that a television station is actually going to pay this much attention to their community and treat their team like they are in the superbowl. One coach said to me that we are the best thing that happened to local high school athletics in as long as he could remember (this coach has been coaching for 35 years). Our games have become so popular that we now have high school athletic directors petitioning our station to cover their games.

In addition to this programming we provide our community leaders with four half hour blocks of time each week to discuss critical government issues. We air five hours per week of educational children's programming, 70 hours per week of national news, 15 hours per week of America's Voice Network, and 12 hours per week of syndicated entertainment programming. We are the home of Atlantic 10 basketball, The CIAA conference, the WAC Conference, the Mid Continent Conference and the Northeast Conference. We are announcing this week that we are the television broadcast home of the Pittsburgh Riverhounds, a new soccer franchise coming to Pittsburgh. We fully comply with FCC Part 73 rules. We look, act and feel like any full power station.

The combination of DTV, Public Safety and Commercial spectrum allocations has resulted in a devastating blow to WBGN-TV. We have been displaced on all 12 of our stations including the Fox affiliate in Youngstown. FCC Chairman Bill Kennard with the help of staff members like Susan Fox, Roy Stewart, Keith Larsen and others made giant steps in the 6th report and order to help LPTV find replacement channels. Unfortunately for us at WBGN-TV, at this writing, we have only been able to find displacement channels for three of our stations.

Miss Debra Goodworth and I are not wealthy people. We come from working class families and neither of us have a rich uncle. We have our life savings and financial future at stake with these stations. Even if we can find replacement channels for each of these 12 stations, we may have to spend up to \$100,000 per station to find new locations and completely rebuild WBGN-TV. The bank will not lend me \$1,200,000 for a network of "secondary" stations. It doesn't make sense to spend this amount of money only to know that we may be replaced again and again and again. We had reasonable expectations when we started in LPTV of what "secondary" meant and what the risks were—but to go to a replacement channel now without permanent status would be financial suicide. Low power stations simply need permanent status.

The current laws seem to have abandoned the commitment made in 1981 to thousands of LPTV entrepreneurs across the country. Most owners are not wealthy people, they are truly small businesses that just happen to be broadcasters. The current rules and regulations are threatening to eliminate an entire segment of the free "over the air" broadcast service. This is happening in favor of powerful conglomerates that are becoming further and further removed from the concept of community service that has been the hall mark of Broadcasting since the Communications Act of 1934.

If this legislation is passed as written, television viewers in Western Pennsylvania and across the country will reap the rewards of securing community television in their area. H.R. 486 will give WBGN-TV the capability to continue to provide high quality local programming for all of its viewers. Our communities love our station—in fact they call it "their station". Sponsors pay to be on our station because the community watches our local programming. Local government officials communicate important local issues to the public through the use of our stations. We have done our jobs as responsible broadcasters. Please allow us firm ground to operate on—please pass H.R. 486.

Thank you Mr. Chairman and members of congress for your time.

Mr. TAUZIN. Thank you very much.

The Chair is also pleased to welcome Mr. Charlie Norwood of Georgia, who is not a member of this subcommittee, but the Chair will ask anonymous consent if Mr. Norwood could participate with us in these hearings. Without objection, so ordered.

Welcome, Mr. Norwood. As one of the principal sponsors of the legislation, we are pleased to have you here, sir.

Thank you all for your testimony. The Chair will recognize himself for a round of questions, and members in order of appearance.

Let me, first, turn to you, Mr. Stewart. Is it likely that LPTV stations who are unable to find replacement channels may be required to cease operations?

Mr. STEWART. To the extent that a LPTV station cannot find a replacement channel, there is a very good likelihood that they may very well have to cease operations.

Mr. TAUZIN. So, in the case of Mr. Bruno, where he has found replacement for only 3 of his 12 stations, is there a good likelihood that any, or most, of those stations will go dark?

Mr. STEWART. Well, I would not want to say that without sitting down with Mr. Bruno, as we have in the past, and trying to work out some ability on the part of the Commission to accommodate the need, because I think the critical element here is to try to find a way to do the transition to digital television, which has a tremendous value for the American public, and at the same time continue to provide the service that these gentlemen are providing in their local communities.

Mr. TAUZIN. He makes a point, though, that even if you find him a replacement channel, he may get bumped again, and he cannot afford to. In fact, the banks will not give him \$100,000 every time it happens. How do we deal with that?

Mr. STEWART. Well, I would like to see—we spent a lot of time, Mr. Chairman, on the table of allotments, and on the technical standards, and I am pretty much convinced that most of the American television stations are going to be able to replicate their service with no problem, and no real impact on low-power television stations. We got very few reconsideration petitions that adjusted the table as a result of the work that we had done. We have implemented the digital television in the major markets, and have not run afoul of concerns about impact.

Mr. TAUZIN. Let me turn it around then: If it is likely that they will not have to be replaced again, is the Commission considering permanent status for the placements you do find for Mr. Bruno's station?

Mr. STEWART. Yes, I think the Commission has a petition before it, filed by the Community Broadcasters Association. The Chairman has expressed his interest in trying to classify low-power stations with a Class A status, to give it permanency. He has asked the Commissioners to support that, and I expect that we will be acting soon on that petition, for rulemaking in a reasonably short period of time.

Mr. TAUZIN. Mr. Sullivan, you want to comment?

Mr. SULLIVAN. I just wanted to add that the example that I gave earlier about the two Spanish language stations here in the District of Columbia, right now, I do not think either of them has

found replacement channels. So, it means, with the advent of public safety, one goes away. When channel 5, the FOX affiliate, I believe here in the District, comes on, our channel 48 goes away, and the laws of physics allow only so much, and so we do have some hard spots, some unresolved issues. But then added to that—and that is what this legislation is really about—is for those, like in Akron, who are hanging on, so that they can spend their million dollars, provide the service to the couple of hundred thousand folks of that community, and not risk being knocked again.

Mr. TAUZIN. Mr. May, give me a short summary, your concern about doing that. What is your concern about legislation that would make permanent these placement slots?

Mr. MAY. Mr. Chairman, I do not think we expressed as strong a concern about the permanency of a Class A license as we expressed a very real reservation about the timing of the creation of that license; what protections go with that license on an immediate basis, vis-a-vis the transition that is going to take place for digital. Remember, that it is great that we have got 57 channels on the air; it is great that we are going to have 4 times 30 more markets on the air by November of this year, but we have got 1,700 stations out there, and the vast majority of those are not even going to begin the process of building until the end of the year 2000 and 2001. And I do not think anybody on the dias, or sitting at this table, or at the Commission, can say with absolute certainty that every one of those assignments is going to work. We want to make sure that, if we have got this requirement to get the system up and operating, that the Commission and broadcasters have the flexibility to know that it is going to work seamlessly; and that we are not going to find that broadcasters have to go through some sort of a competing process with a newly minted Class A licensee. As we get to that point, the way that this bill is written, that could well be the case.

Mr. TAUZIN. React to that, Mr. Sullivan. My time has expired.

Mr. SULLIVAN. Okay, I guess I would like to ask Mr. May if he believes there is any integrity in the 1,750 digital allotments that the Commission has given. You know, are most of these duds, or are a significant number of them duds, or are these really channels that have integrity, where we can have reasonable expectation that they are going to be working?

Mr. MAY. And the answer to that is, we hope that these are good assignments, but I do not think any of us have that reality yet, because this is a brand-new system; this is one that is just getting off the ground.

Mr. TAUZIN. The time of the chairman has expired. I might point out that maybe in the legislation we may approach this with some sort of hold-harmless concept; we may want to talk about that.

The Chair is pleased to recognize the gentlemen from Pennsylvania, Mr. Klink.

Mr. KLINK. Thank you, and I thank the witnesses. This has been an interesting discussion, and I want to kind of get this straight, though, because I understand, Mr. May, who has been a friend for a long time, I understand your point about your making this transition, and what is going to happen. But right now full-power sta-

tions have already been given their second channel digital allotments, my understanding; is that correct?

Mr. MAY. That is accurate.

Mr. KLINK. A lot of low-power stations, as we have heard, have already been displaced; some of them have gone dark. Our bill now, as it is constructed—and it may not be perfect, as Mr. Tauzin has alluded to—we may have to look at some hold harmless. No bills go through very many subcommittees and committees that do not get changed somewhat, maybe a lot of times, but this bill would not do anything to change the table of digital allotments. All it would do is to provide some protection for the low-power stations from future displacements. So that Mr. Bruno, or Mr. Stamler, or someone else can go to the bank, and say, “We are for real. We are going to be here. We are not going to be displaced. If you lend us the money, we are going to make a capital investment in providing public service to the community.” The bill would require these stations to then prove that they do not interfere with any other station, before they can be granted a Class A license. So, I am having a little difficulty in trying to figure out how that has an adverse impact on existing broadcasters.

And, Mr. Stewart, I also was concerned about one of the comments that you made. I want to make sure that I understood it. You seemed to be concerned about the effect these assignments would have on additional analog channels that have applications pending, or maybe do not even have applications pending. My question there is, why should a potential full-power station have preference over a station that is already at work in the community, providing public service?

Mr. STEWART. Congressman, these applications have been pending for a while.

Mr. KLINK. They have been broadcasting for a while.

Mr. STEWART. Okay, I think the question is then, it is a decision for Congress to make, when it makes a value judgment as to whether or not it is more important to keep on the air the kinds of stations that Congressman Deal was talking about in Georgia, that provide a real good service for their community, as opposed to providing opportunities for new full-service broadcast stations. It is a trade that you have to make.

As far as the other matter you raised, what I am saying is that I do not think, after all the effort we have put into that table and the technical standards, that we believe that there is going to be a lot of situations—we do not believe that there will be a lot of situations where we are going to have further impact of these DTV stations on the low-power stations. And what we should do is to put a safety net into this bill that enables the Commission, in those rare circumstances, to make any adjustments we deem appropriate to the low-power television service station, even if it is a Class A station. And that way, maybe we can go on, create the Class A service, give the Commission some flexibility to say in those few situations—and I cannot quantify them, but we do not think there is going to be a lot of them—that the Commission will have some ability to be able to make some adjustments in what we otherwise called a Class A station, perhaps changing its contours to some ex-

tent, so that we could go on and create this class, and the service it provides.

Mr. KLINK. Let me ask you a question. My time is probably running out. Could that adjustment that you are making, ultimately, still be a death sentence for one of these—I mean, what kind of adjustments are we talking about? If they are going to the bank, and there is still the “sword of Damocles” hanging over their head, how in the world are they going to be able to stay in business? How are they going to get capital to continue to expand their operations? They still have to make the transition to digital as well.

Mr. STEWART. First, I do not think we will have a lot of situations like that, Congressman. And, second, I think, if we had that flexibility from the statute, we would try to do something that had the most diminutive impact on the operations of those stations in terms of their future viability. I mean, it may be adjusting their contour to make them pull back slightly. It might not be to take them off the air.

Mr. KLINK. Could we guarantee that in the language of the law, and the language of the regulation, so there was going to be in fact a diminutive—

Mr. STEWART. I think we could work with the committee on determining what the appropriate language would be, to give the Commission the flexibility it might need in those limited circumstances, and still preserve most of the low-power television stations, and create the Class A status.

Mr. KLINK. Thank you, Mr. Stewart. Thank you.

Mr. TAUZIN. You wanted to react, Mr. Sullivan?

Mr. SULLIVAN. Yes, I would like to respond to Mr. Klink’s comments that I think CBA can work. In fact, we would be delighted to work with the committee in terms of developing some language that can be that safety net, because, one, I guess I like to think of the probability of problems maybe as the same as—there is a probability that those leaving the Longworth today will get hit by a car walking across Independence Avenue, but the probability is not such that the House administration locks the door, you know, on the Longworth Building to make sure that nobody gets hit.

So, I think that is what we have to deal with, and in anticipation of this problem a little bit, I have developed some language that I would like to submit for the record for the committee today to consider. And we would be delighted to work with committee staff, and we would be delighted to work with Mr. May, and the FCC, in coming up with an acceptable safety net.

Mr. TAUZIN. Thank you very much. We are pleased to accept that suggestion, as well as any you might have in regard to how we might work that delicate of a situation.

[The information referred to follows:]

After certification of eligibility if unforeseen technical problems arise requiring an engineering solution to a station’s allotted parameters or channel assignments in the DTV Table of Allotments, the Commission is authorized to make such modification to ensure replication of the digital applicants service area as provided for in the Commission Regulations.

Mr. TAUZIN. The Chair is now pleased to welcome the gentleman from Georgia, Mr. Deal, for a line of questions.

Mr. DEAL. Thank you, Mr. Chairman.

Could anyone on the panel give me some estimate as to how many low-power stations will be displaced with full-power stations moving to digital?

Mr. LARSON. Congressman, early studies in the DTV proceeding at the FCC had estimated that possibly as many as 35 percent of the low-power stations in the country could possibly be displaced.

Mr. SULLIVAN. That is consistent with our information, too.

Mr. DEAL. What contingencies, if any, does the FCC have to deal with that problem?

Mr. LARSON. The FCC has adopted a number of relief measures in the DTV proceeding, including providing opportunities for displaced stations to seek replacement channels on a non-competitive basis, granting these kind of applications the highest priority among all of the low-power applications considered by the Commission. It also relaxed certain interference standards that it found to be overly restrictive, giving low-power stations more flexibility to find other channels; undertook a number of others measures, allowing low-power stations, for example, to negotiate interference agreements among each other, and there were several others.

Mr. DEAL. Is it the language of the Telecom Act itself that restricts the channel allocations that the full-power can be assigned? In other words, why should the low-power folks be the ones that have to go out and look for alternatives? Is it the language of the telecom statute that gives the priority of displacing?

Mr. STEWART. Yes, Congressman, the language is licensees and permittees at the time that we give out the authorization, and it was full-service licensees; it was not low-power. So there was a deliberately—

Mr. DEAL. No, you are missing my point, I think. I am talking about when they are now given another channel allocation for a digital broadcast.

Mr. STEWART. Yes.

Mr. DEAL. Does the language of the Telecom Act itself prescribe the channel ranges that require the displacement of low-power?

Mr. STEWART. No, that was left, I think, to the Commission to decide that.

Mr. DEAL. If that is the case, then, and you are telling a low-power station that is being displaced to go look for another allocation, if there is another allocation, why should that not be placed on the full-power station that is asking for the allocation, rather than the other way around?

Mr. STEWART. Well, it was, first, the Congress did restrict the ability of the Commission to use all the frequencies. For example, the channels between 60 and 69 were taken from the Commission for mobile safety, and to be opened up for competitive bidding. So, we do not have that broad range. You are suggesting that maybe Congress meant to say that the broadcasters should have to vacate or find another channel themselves. I am not sure that I follow your question, Congressman.

Mr. DEAL. Well, as I understood, the answer I have received is that, if you are now looking for a digital allocation slot for a full-power station, they come and take the allocation of a low-power station—all right?—and it is given to them in a preferential assignment. I then asked what is going to happen to the low-power sta-

tion. You said, "Well, the low-power station can then go look for some other channel allocation." If that is the option, why is it that the low-power has to go look for it? Why should it not be the one who is asking in the first place, the full-power, be required to do so?

Mr. STEWART. What we were trying to do was to make certain that, when we assign channels for digital television, and paired them to each present NTSC licensee, that we were able to get channels that would replicate in terms of the height and power the service area of the existing stations. So, that was what drove us to pair channels, and not say that the television licensee had to move someplace else. Well, we were looking at your channel. We tried to figure out, based upon the table that we developed and the technical parameters of that table, what channel could match, if operated by you, your present coverage area when you move to a DTV environment, and that restricted our ability in terms of who moves to what direction.

Mr. TAUZIN. I thank the gentleman. The Chair is now pleased to welcome the gentlelady, Ms. Cubin, for a line of questions.

Mrs. CUBIN. Thank you, Mr. Chairman.

As most of you know, I am new on the committee, so I have some questions that may be very elementary. I want to start with Mr. Stewart. I believe, you said that approximately 35 percent of the 2,100 low-powered TV stations will be displaced. And then you said, of that—so that is about 735 stations across the country—and then you said, of that, that very few, let me see, that there would be very few situations—describe what kind of—

Mr. STEWART. Beyond that, Congresswoman, in other words, once we have made the initial assignment of licenses to pair channels, so that the existing broadcaster could transition to a digital channel, and then presumably return the channel that it is operating on now back to Congress, so that we can have auctions of that channel for various uses. Beyond the initial 35 percent cut, where we have matching channels, and it affected low-power television stations, we do not think that there is going to be many more situations where we are going to find that there is going to be, to achieve the replication of service, where there is going to be a significant impact on more low-power television stations.

Mrs. CUBIN. Then 735?

Mr. STEWART. Right, right.

Mrs. CUBIN. Tell me what you mean by significant impact.

Mr. STEWART. Well, maybe I will learn not to use a word like this in the future.

I mean, we do not think there will be enough of an impact; that if we put some kind of a safety net into this statute, which apparently Mr. Sullivan has suggested already, that we will not have to use it that many times, because we think that the table that we have developed and the technical parameters were designed to make certain that we have a smooth transition, from a technical point of view. I do not want to use the word "significant" again, but I do not think that we envisioned that there would be a number of situations that would tie up my resources, having to figure out what kind of changes we would have to make.

Mr. LARSON. Let me add something to what Mr. Stewart said.

Mrs. CUBIN. Please do, because I was not thinking about asking about numbers. I was asking what significant impact is, going dark to having to change letterhead?

Mr. LARSON. A significant impact could be requiring a station to have to change its channel, because as some of the other witnesses have testified, that can be an expensive proposition.

Mrs. CUBIN. Right.

Mr. LARSON. Even more significant would be the possibility that some stations would have to cease operating. I would like to add, though, that there will be some low-power television stations that will survive the transition to DTV. That is, the impact of protecting, or being protected by these initial DTV broadcasters, only to be faced with the possibility of being displaced by yet a new entrant, or additional DTV stations, and that would be another level that they would have to be concerned about down the road.

Mrs. CUBIN. Mr. Bruno, or anyone else—Mr. Sullivan—who would like to answer it: I think that Mr. May makes a good point about the timing, that transition does not have to be done until 2002, and then the bands turn back 2006; and yet, this would take place relatively soon. Would you respond to that for me? To me, that is a legitimate point.

Mr. SULLIVAN. So, you are suggesting basically that maybe we should consider—

Mrs. CUBIN. I am just saying, what do you think about that?

Mr. SULLIVAN. What do I think about it? I think what it does is that it provides the opportunity for HTV in Houma, Louisiana to be displaced again, and again, and again. It provides that same opportunity in Mr. Norwood's district, in Mr. Deal's district, and in Laramie, Wyoming. Your station can be bumped again during that timeframe, and when you do \$100,000 a pop on these low-power stations, and how many times can they handle being displaced; or why can not they develop the way they should in Akron, Ohio? Again, a half a million population, I mean, I should say, half a congressional district population in Akron.

Mrs. CUBIN. Mr. Chairman, I see my time is up, but I just have one question. What was the safety net language that you offered for the record?

Mr. SULLIVAN. Well, it is probably more garbled than lawyers would like.

Mrs. CUBIN. Then just give me the simple English.

Mr. SULLIVAN. What it does basically is, in the FCC testimony, they talked about these unforeseen problems, and I think that is a keyword. Right now they believe there is integrity in the allotments. The NAB believes there is less integrity, I think—is this correct, Jim?—than the FCC would be inclined. So, what we want to do is where, if there are some serious engineering problems that develop within the allotment of any of the 1,750 allocations that have been made, that it would provide the flexibility to the Commission to make what change was necessary to make sure that the broadcaster could equal 100 percent of the replication with their DTV channel, 100 percent of the replication of the operating NTSC channel.

Mrs. CUBIN. So, you cannot see any room for compromise on the timing aspect?

Mr. SULLIVAN. I think, no. I think that we would have to oppose that, and oppose that very vigorously, because if we have this kind of safety net language in there, the Commission has that flexibility to correct the problem for 1, 5, or 50 stations, and we do not have to put the entire low-power industry on hold—

Mrs. CUBIN. Thank you, Mr. Sullivan.

Mr. SULLIVAN. [continuing] facing the risks of these additional displacements.

Mrs. CUBIN. Thank you.

Mr. TAUZIN. I thank the gentlelady. The Chair is now pleased to recognize our guest. Charlie, the rules of the House require that guests go last, so this was not personal. If it is any consolation, Mr. Stamler and his wife went 3 years without a paycheck, putting their station together. It was a lot easier on you, Mr. Norwood.

Mr. NORWOOD. Mr. Chairman, I certainly do abide by the rules. I am just grateful that you allowed me to have an opportunity to come before your fine committee.

Mr. TAUZIN. We are glad to have you.

Mr. NORWOOD. Mr. Stewart, you have read over H.R. 486?

Mr. STEWART. Yes.

Mr. NORWOOD. You understand what we are trying get at there?

Mr. STEWART. Yes.

Mr. NORWOOD. Is there anything in the law today that would prevent you from taking care of this problem without us passing this bill?

Mr. STEWART. I think there is a petition before the Commission, filed by the Community Broadcasters Association. My Bureau is actively involved in working with the Commissioners on the content of the Notice of Proposed Rulemaking, raising a lot of the issues we have been talking about. What is the effect down the road, if you want to auction off this digital spectrum, and provide money to the Treasury, in terms of its impact on any Class A stations that are provided for?

Mr. NORWOOD. Can you fix the problem without us passing this bill?

Mr. STEWART. I would like the opportunity to try.

Mr. NORWOOD. Any reason you think you could not?

Mr. STEWART. The Commission is a congenial body, and it has to work together, and I would hope that we would be able to do that. The Chairman has certainly encouraged the Commissioners to seek—to adopt rules that would provide this type of Class A protection.

Mr. NORWOOD. Can you adapt rules before 2002? Well, some folks can around here cannot.

Mr. STEWART. I am sorry?

Mr. TAUZIN. I think he wants to know if you are a high-powered or low-powered Commission.

Mr. NORWOOD. I want to know if you can fix the problem, or if you are willing to fix the problem, and if so, how soon?

Mr. STEWART. Well, I would hope that the Commission will act reasonably soon. The Chairman said he would like to do it as soon as possible. He has encouraged the Commissioners to do it. The Bureau is working with the Commission now. There are, in fairness, a whole host of issues that we have not explored this after-

noon, sitting here; we have only talked about replication of digital television signals, and the impact on low-power Class A. There are these future applications, and what happens to them. I think that we can do it. I think the Chairman would like the opportunity to do it, and, I would—

Mr. NORWOOD. Does it speed you up any as we get more co-sponsors?

Mr. STEWART. I think the answer to that is yes.

Mr. NORWOOD. Well, Mr. Sullivan, part of the problem, as I understand it is, has to do with financing of low-power, and I certainly can understand, and have been explained to very clearly in my district, about low-power, how it is an untenable situation for you to try to run a small business—one, by the way, that brings a lot of jobs in our districts; that many communities in our district appreciate what you do very much. It is not that we do not want to watch Mr. May's stations; we do, but we appreciate those things that you do, too. But it is so hard for you to grow and get better, because the bankers do what?

Mr. SULLIVAN. What do the bankers do? I think the president of our association, Sherwin Grossman, stated it best as he both developed a number of television stations as well as chartered a series of banks, and he made a comment 1 day that, if he had a loan officer that would loan, make a loan to a low-power station, he would fire him on the spot.

Mr. NORWOOD. Because he—

Mr. SULLIVAN. Because—probably because—he knew that the bank examiner would close his door next time the bank examiner came, when he saw that loan.

Mr. NORWOOD. You mean, you are not a good investment because the Federal Government may take your business out from under you tomorrow? Is that what that means?

Mr. SULLIVAN. Oh, it can take it out tomorrow, but, again, can take it out repeatedly. I mean, Mr. Oxley's constituents just paid \$75,000 to \$100,000 to re-channel FOX 67 out down to FOX 25. That part of the country is—which is not that far from Mr. Sawyer's area—really spectrum scarce now. You get bumped in that area, and the probability of finding another channel is really very, very limited.

Mr. NORWOOD. That is why we cannot wait to 2002; we need to get it done by summer, if we can.

Mr. STEWART. I will convey that message to the Chairman, as I am sure the chairman of the subcommittee will, also.

Mr. NORWOOD. Mr. May, you go co-sponsoring our bill yet?

Mr. MAY. Mr. Norwood, I do not think we will see our names on there as co-sponsors of you legislation, but I—

Mr. NORWOOD. But you will get by all right if we pass it, will you not?

Mr. MAY. Well, sir, I think we would like to see some changes made to it, or changes made to what the Commission is considering. You know, I might want to go so far out on a limb as to suggest that a lot of this would not be a problem. I think Mr. Sullivan, Mr. DeVault, and Dr. Stamler, and others, would agree, if the Congress in its rush to generate a whole lot of cash had not tried to

auction off 67 to 69, then a lot of this would not be even a problem today.

Mr. NORWOOD. Mr. Chairman, I see the red light, and I will certainly abide by that, but I am very grateful to you for giving me a few minutes. I have a few other questions, if I could submit in writing?

Mr. TAUZIN. Not a problem.

Mr. NORWOOD. Thank you, sir, and one of them is, how do you spell "Kasich?"

Mr. TAUZIN. The gentleman from New York, Mr. Vito Fossella, is here. Line of questions for you?

Mr. FOSSELLA. No, Mr. Chairman.

Mr. TAUZIN. Thank you for coming, Vito.

Mr. BRUNO wanted to respond.

Mr. BRUNO. I would just like to try to explain a practical situation with our 12 TV stations—to kind of put this into perspective, what I may have to go through from now to the year 2002. For me to go out and get a \$1.2 million loan to replace all of my 12 television stations puts me out of about \$20,000 a month on loan over 5 years. The year 2002 is only assuming that I have \$20,000 of profit, which I do not, that I can invest in that debt service. If I get bumped between now and the year 2002 again, and who knows how many times that would be, that would be another \$20,000 per month; we are up to \$40,000. If I get bumped a second time, that I have to take from profits of our station, which I certainly do not make \$40,000 a month of profit, to pay off that debt service, because I keep getting bumped around.

So in a practical sense, the bank says no to me, "Ron Bruno, you get permanent, and then we will give you the money, but until you are permanent, forget it."

Mr. TAUZIN. Of course, the question was for us, if you do get permanent, can you get those loans?

Mr. BRUNO. I believe if we are permanent, we can get a combination of loan and investment, and continue.

Mr. STAMLER. Mr. Chairman, about 10 years ago, we invited the low-power television branch to visit our television station in Woodstock, which I say is about 1½ hours west of Washington, DC.

Mr. TAUZIN. That is not the Woodstock of—

Mr. STAMLER. Not at all. They are not the same.

Mr. TAUZIN. That is the one off of Interstate 81.

Mr. STAMLER. That is the one. I would like to extend that same invitation to the subcommittee, to come and see what a working low-power television station looks like. A lot of you people probably have never been there. Your committee and its staff, you are more than welcome to come up and see that we are real.

Mr. TAUZIN. That is very kind of you. I want you to know that I have been in low-power stations, and actually participated in some programming there. So I am well acquainted with it. Mr. Sullivan has made sure that we are well acquainted with our low-power stations at home.

Mr. SULLIVAN. Mr. Chairman, I understand that you have even done some Cajun cooking on HTV?

Mr. TAUZIN. Much to my shame, I have.

Mr. SULLIVAN. Mr. Chairman, but the constituents love it.

Mr. TAUZIN. Mr. Norwood.

Mr. NORWOOD. I cannot help but note or tell Mr. Stamler, if we have anything to do with it, if we are going to check out a low-power station, it is going to be in either Louisiana or Georgia; I can tell you that right now.

Mr. TAUZIN. I want to get a couple of responses before we wrap up. Mr. Stewart asked us to focus on three sections of the bill: one dealing with the protections from interference. None of you responded to that. I would like to get a response to any of his concerns. What exactly is your concern there, Mr. Stewart?

Mr. STEWART. Well, the statute would provide that the protection of the contours of the Class A stations would come in a very early period of time, while we still have applications pending for new stations, while we have not finished the replication applications for digital television being filed. And the concern that we have, we are not sure what the impact may be. We do not think it is going to be significant, but that raises this idea of putting in some kind of a safety net, so we can deal with these situations, if they arise, because the language in the statute is rather categorical.

Mr. TAUZIN. Yes, so the question is, if I can summarize, in the section of a bill that provides for interference protection, is it possible to have some sort of safety net protection, as some of the Commission's decisions come down? And I just ask you to think about that and respond to us, either now or in writing.

Mr. SULLIVAN. Okay, we are fully prepared to make a combination as a safety net, to make sure that we can do everything possible to preserve the integrity of the 1,750 digital allotments. You know, digital, everybody wants digital to work; we want it to work.

Mr. TAUZIN. I think I heard that rather clearly, but we need to see in language what might accomplish that.

Second, the Commission indicated that they were concerned that section 3(b) precludes the FCC from using competitive bidding to select among competing Class A designation applications. We have been through comparative license renewals and comparative license processes, and I think the FCC is probably still in court over a lot of those. We got away from that and went to competitive bidding, in order to literally get away from the green mailing, and the lawsuits, and everything else, that were literally associated with that process. I do not want to go back to it, frankly. I do not think anybody in this Commission—I know the vice chairman, Mr. Oxley, was very instrumental in the bidding process, the auction process; would be very apposed to going back to it.

What is your answer? Why is that in the bill, and how do you resolve it, if you take that out of the bill? If it is not a bidding process, how do you settle competing applications?

Mr. SULLIVAN. Well, we agree with the FCC that maybe the provision that is in the bill, that Mr. Norwood agreed to add, is not perfect, and needs to be looked at, but it is not a happy day when you can put 2 or 3 broadcasters head to head against one another who are secondary status.

Mr. TAUZIN. Well, think of—

Mr. SULLIVAN. You know, so how much are they inclined to bid, when they do not know if a week down the road after they win the

bidding, and pay the money, that they are even going to continue to hold the channel.

Mr. TAUZIN. If you are going to get a Class A permanent license, it may be worth bidding for, but the bottom line is that we need some resolution of this. To leave it with no bidding process, and no resolution of how to settle it, is not going to be acceptable, and I would suggest that all the parties be thinking about a respectable solution before we move legislation.

Mr. SULLIVAN. Okay.

Mr. TAUZIN. Let me turn to the third concern that the FCC has raised, and that is, that it exempts Class A stations from ownership rules that apply to full-service stations. Now, let me be candid, Mr. Stewart, I am not particularly enamored of the ownership rules at the FCC. And, as you know, I have petitioned the FCC personally, and a lot of other members, to strongly consider revising those rules, and rapidly, at least within the biennial review process required by law to do so. Is there a message there? I hope so.

Mr. STEWART. I heard it.

Mr. TAUZIN. In any respect, his concern is, if there is a rule, shouldn't it apply equally to Class A stations, as to full-service stations? Would you please respond?

Mr. SULLIVAN. Yes. We are different from full-power in the sense that we are local, community broadcasters, as opposed to regional or big market broadcasters, and this was in the bill primarily—

Mr. TAUZIN. But let me stop you. If you have got a permanent license, you become something else.

Mr. SULLIVAN. Oh, I understand, but we are still—

Mr. TAUZIN. If you get a permanent license, should not you be subject to the same rules as the other permanent license-holders in the community? Why not?

Mr. DeVault, you have got them both. Please tell me, what is the difference?

Mr. DEVAULT. I would say, why not—because the low-power station has now, and would continue to have, much more limited coverage than the full-power station.

Mr. TAUZIN. But, what has this got to do with the purpose of, and the continuation of, these ownership restrictions? You understand, I have problems justifying the continuation of these ownerships personally—

Mr. DEVAULT. I know you do.

Mr. TAUZIN. But if you have got to have them, and if they exist, why shouldn't they apply to someone with a broader coverage as opposed to someone with smaller coverage? After all, they apply to stations in Lafayette and New York simultaneously. I suspect a broader coverage is in New York than in Lafayette, Louisiana. What is the difference here?

Mr. DEVAULT. I think if more full-power stations had looked to the possibility of developing low-power stations to serve there in close communities, instead of trying to lease out, or whatever, someone else's full-service television station, we probably would not be fighting this battle today.

Mr. TAUZIN. I haven't heard a good answer yet, but I want you to keep thinking about it, and come back to me because I need a good answer here.

Mr. DEVAULT. Okay.

Mr. TAUZIN. Mr. Stamler.

Mr. STAMLER. Mr. Chairman, we are Shenandoah County, which is a lengthy county that requires four channels to cover it. If we were restricted to only one channel in ownership for Shenandoah County, we could not do it.

Mr. TAUZIN. Mr. Stewart.

Mr. STEWART. We do not have any restrictions now. You can own seven low-power stations in your city, and a TV station, a full-service TV station, can own you. But if we elevate you to something other than a secondary service, then the concern we might have is that a full-service television station may buy you, and we lose the localism that you had. They will control your programming, and normally we would not let you own—and I will say this quietly, Mr. Chairman—two TV's in the same city.

Mr. TAUZIN. Oh, God forbid.

Mr. STEWART. But, so that is the concern that I am looking at, that if you get elevated to a new class, that a full-service licensee then could own this elevated new class, unlike its ability to own a secondary service that may get knocked off the air; and a new class that is going have all the responsibilities, hopefully, that a full-service television station had, so that you can get the recognition there.

Mr. TAUZIN. Let me just jump in here and tell you, we have the same problem in financial institutions. You know, we got a law that tried to separate security businesses from banking businesses, and the marketplace began to merge the two, and now we made special classes out of one and the other, and some became special targets of acquisition. The point Mr. Stewart is making is, are you are going to become special targets of acquisition, as a full license operator, by a full-power station, because owning you is a way to avoid the ownership rules that they might have if they bought any other station? Mr. DeVault?

Mr. DEVAULT. Well, as I understand it, and I pointed out in my testimony, the requirements for local program origination that are in this bill for local low-power stations that are seeking Class A status are requirements that do not even apply to full-service stations. And if a low-power station gained Class A status, it is my understanding that station would have to continue to comply with that requirement on into the future. It couldn't just gain the status, and then stop doing the local programming.

Mr. TAUZIN. Mr. Norwood wanted to jump in here.

Mr. NORWOOD. Well, I just wanted to make a point that there are restrictions on low-power now that are not on full-power. I wonder, if Mr. May wants to buy any low-power stations—I do not think there is any reason they cannot own them, if they want to.

But back to you, Mr. Stewart, the perfect—

Mr. TAUZIN. I have got to jump in here. You had made Mr. May both a Member of Congress and now a television station owner, which I am not sure you really want—go ahead.

Mr. NORWOOD. Well, you have got my meaning.

Mr. Stewart, the purpose of the ownership restrictions is for what?

Mr. STEWART. To encourage diversity of ownership and view point in the community, and to make certain that there is a competitive balance in the community in terms of not being able to dominate the advertising market. The Commission's ownership rule—

Mr. NORWOOD. You do not want any media monopolies out there?

Mr. STEWART. That is correct, sir.

Mr. NORWOOD. And, I do not know, what you mean by diversity. What does that mean?

Mr. STEWART. Well, the theory would be that the—here I go again, Mr. Chairman—that the widest dissemination of ownership in terms of a community may provide the opportunity for divergent viewpoints. So that the more ownership sources you have, or programming sources in terms of stations, if you have separately owned stations, you have more of a chance of having more diversity of viewpoint. And if the full-service station can buy out its competition by buying that new Class A low-power television station, I am not sure that is good for the community. I do not know what the full-service station might do to Doug Jensen's Class A station, once it buys it, if Doug lets it go. You might lose something about its talent that it has when Doug has it—

Mr. NORWOOD. You aren't worried about monopolies in low-power, though, are you?

Mr. STEWART. No.

Mr. NORWOOD. Are you concerned that any of these men may cover 8 counties rather than 2?

Mr. STEWART. You can own as many low-power television stations—there is no national limit. You can own as many locally. But once we elevate it to something different, that makes it like a full-service station, then I think there maybe some value in looking at the ownership rules and saying, wait a minute, we do not want the television stations in the city to buy all these new Class A stations up, and perhaps change what they do in terms of the programming.

Mr. NORWOOD. Mr. Chairman, you got it right. Rather than us raising the threshold of ownership rules for low-power, why do not we go in there and lower the threshold for ownership rules for full-power, and we might get this thing a little balanced?

Mr. TAUZIN. In fact, Mr. Norwood, we will have this another day, but I would love to know, Mr. Stewart, why it is that cable companies can consolidate in communities? There used to be 3, 4, or 5 cable companies in Los Angeles, and it is gradually becoming just one. And as they are consolidating, buying out each other in each other's community, and becoming a bigger market power and a single voice in the community for advertisers, why is that permitted, and why are television stations subject to these ownership rules? We will get to that discussion 1 day, but solving that riddle might help us solve Mr. Norwood's riddle of equal treatment to the low-power stations.

It has been a very good hearing. Let me thank you, Mr. Norwood. Thank you for participating.

I would thank the panelists. I have asked you to respond to us with more information and suggestions. Please don't miss that opportunity. Before we go forward with this bill, I would like to examine whether some of the real concerns Mr. Stewart has raised,

Mr. May has raised, regarding the timing, and the concerns you have raised regarding financing, if there is not some way to accommodate all those concerns simultaneously. As you know, that is always our wish. We do not like to pick winners and losers out there. We would like to see everybody flourish in this marketplace, if possible.

Thank you very much for your attention and your contributions. The hearing stands adjourned.

[Whereupon, at 4.02 p.m. the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

COMMUNITY BROADCASTERS ASSOCIATION
April 15, 1999

HONORABLE BILLY TAUZIN
Chairman
Subcommittee on Telecommunications, Trade and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20510

DEAR MR. CHAIRMAN: We are grateful for the opportunity to participate in your April 13 hearing on the Regulatory Status of Low Power Television Licenses. It helped us get a better sense of issues of importance to you and your colleagues on the Subcommittee. We also found it very helpful to be at the same table with spokesmen from the Commission and NAB. At the end of the hearing you asked that we respond to the four concerns raised by the FCC in their testimony. We are pleased to have the opportunity to do that. We will discuss them in the order they appeared on pages 7-9 of their testimony.

1. Beginning on page 7, the Commission expressed concern that class A status could constrain them from "authorizing new analog television service for which applications are pending."

CBA would like to share with the Subcommittee our understanding of this issue. While rumors were in the air for approximately six months before any official statement, in June 1996, the Commission announced that as of September 20, 1996, it would not accept further applications for full power analog stations. It is our understanding that during this ten month period, a significant majority of the estimated 800 applications were filed for these new full power analog stations. Since many of the applicants filed for the same or conflicting channels, the total number of planned new grants is approximately 300. The Commission has already granted some of these new assignments, with the result of displacing low power stations in their communities of service.

If the Congress would choose to give priority to these new applicants, over existing class A eligible stations, this puts at risk all the community stations, plus many others, that CBA discussed in their testimony before the Subcommittee. We agree completely with Mr. Deal's assessment of this issue. He asked the FCC spokesman, if he were being asked to choose between his local station in Dalton versus a pending application, whose programming and commitment to the community he knew nothing about?"

Many of the class A eligible stations have investments in the hundreds of thousands of dollars, some more than a million dollars in their community based stations. These investments and their commitment to their communities came well before the hugely significant DTV, public safety and commercial spectrum reallocation decision of the mid-1990s. The "last opportunity" rush for analog stations came after most of these investments. The engineering and legal costs associated with these applications are minuscule in comparison to those of the class A eligible operating stations.

In a July 27, 1998 letter to Senator Ford and others on the Senate Commerce Committee, Chairman Kennard concluded a discussion on this issue with the statement, "I note this issue for your consideration." He included *no* recommendation to the Senate Commerce Committee. CBA believes that this is a public policy not regulatory issue. We believe it's not only within the purview of the Congress but one that needs to be decided by the Congress. The outcome of this issue is of critical importance to prospective class A licensees and their unserved and underserved communities throughout the United States.

2. The Commission also expressed concern that there is insufficient flexibility in H.R. 496 to address future, unforeseen engineering problems that may arise during the digital transition.

Subcommittee members and panelists discussed this problem at some length and suggested the addition of some type of “safety net” provision that would provide needed flexibility. CBA can support a safety net concept but wants to be certain that its use is limited to documented, engineering problems that need resolution to ensure utilization of replicated allotments. CBA proposes the following modification to H.R. 486:

At the end of Sec. (f)(1) add the following—

“If after granting certification of eligibility or a class A license, unforeseen technical problems arise requiring an engineering solution to a station’s allotted parameters or channel assignment in the digital television Table of Allotments, the Commission is authorized to make such modifications, as necessary, to ensure replication of the digital television applicant’s service area, as provided for in 47 CFR Sec. 622.”

3. The Commission also expressed significant concern about a proposed amendment to the auction authority contained in Sec. 309(j)(2) of the Communication’s Act. The Commission properly characterized this amendment stating that it would “prevent the FCC from using competitive bidding in deciding among mutually exclusive applications where one or more of the applicants is a qualified class A licensee or a translator service rebroadcasting the signal of a primary service station within its designated market area.”

CBA is sympathetic to these concerns and is prepared to seek alternative solutions with the Subcommittee and the Commission. But we want to emphasize that there is a real problem that needs a solution.

In the first three months of the Commission’s 1998 Displacement Relief program for low power broadcasters and translator stations, the Commission received more than 1,200 applications for new channel assignments. Approximately, 300 of these applications were mutually exclusive. Applicants were notified and a few found engineering solutions which were most commonly alternative channel assignments. Many remain unresolved due to the scarcity of spectrum available after the DTV, public safety and commercial allocations.

Providing local television service to unserved and underserved rural and urban communities is the cornerstone of this legislation. In those communities, and there are many, where there is insufficient spectrum available to accommodate multiple displacement applications, choices have to be made. CBA struggles with the concept that the deepest pockets determine the outcome. The practical reality is that some of the displaced stations are those who are providing significant levels of local programming in their markets and doing just what this legislation is seeking to encourage and preserve. Some others serve as translators rebroadcasting distant signals. In many instances, the translators carrying the distant signals are part of larger operations, whose financial capabilities far exceed those of the local broadcasters.

The end result of an auction is known before it begins. The low power broadcaster is frequently offered some small compensation to go away. This is usually accepted because the local service licensee knows there is no chance of victory in an auction. This removes the need for an auction. The government never realizes its revenue objectives. And most importantly, another local broadcaster has disappeared from an underserved community. While we know that is not the purpose of the auction authority, CBA believes the Congress must reconcile these market place realities for low power broadcast stations with statutory directives.

CBA can accept that the provision in H.R. 486 may need some revision. However, we remain deeply committed to finding a solution better than what is currently available in Sec. 309(j) of the Communications Act.

4. The Commission also expressed concern with Sec. (f)(3) “common ownership” provisions of this legislation. This concern is based on the possibility that full power television licensees might acquire low power stations as second outlets in their markets, where they are precluded from owning two full power stations. This has the effect of eliminating the benefits of ownership diversity, and local ownership and management participation that mark the low power industry today.

While acquisition of low power stations in the same market could be of concern, ownership of other media that generate cash flow or provide an asset to serve as security for financing has been an important element in making possible the establishment of some of the most prominent locally-owned low power stations that provide extensive local service today. CBA strongly believes that these stations should not be precluded from receiving the benefits of class A status.

To avoid areas of future concern, while not depriving existing stations of the benefit of this legislation, CBA proposes that Sec. (f)(3) be modified as follows (italic portion is added):

(3) COMMON OWNERSHIP—No low power television station, *authorized as of the effective date of this Act*, shall be disqualified for a class A license based on common ownership with any other medium of mass communications.

Thank you for this opportunity to provide additional information. If you have any questions or need further information, please call me or Mike Sullivan.

Sincerely,

SHERWIN GROSSMAN
President, CBA

cc: Chairman Tom Bliley
Congressman John Dingell
Congressman Ed Markey
Congressman Charlie Norwood
Congressman Ron Klink

NATIONAL ASSOCIATION OF BROADCASTERS RESPONSES FOR THE RECORD

Question: You suggest in Talking Points to State Associations that “Crowding LPTV stations into a limited number of vacant channels would create greater interference for both analog and digital television receivers.”

Aren't there two things wrong with this statement:

a) I thought Section 7 of this legislation precludes the FCC from granting any Class A licenses that would create interference for either analog or DTV stations. Isn't that correct?

b) If they are vacant, can't LPTV apply for these and use them whether they are Class A, or not Class A? As I understand this legislation, it's not about using vacant channels but about securing channels so that Class A broadcasters can make the necessary investment to operate these stations. What do I misunderstand?

c) If there is crowding, this bill doesn't change a thing about current LPTV regulations, allowing the FCC to move or cancel any LPTV license that poses a problem.

Answer: a) Talking Point sheet addressed the original “Community Broadcasting Protection Act of 1997” (S. 1427) as introduced on November 7, 1997. The original incarnation of the bill did not appear to provide any interference protection at all. On October 12, 1998, Senator McCain introduced an amendment to S. 1427 that effectively struck the prior language and substituted new language that included a “no interference” section. That language appears virtually verbatim in H.R. 486.

However, the “no interference” language does not provide interference protection to NTSC stations that may have applications for modifications that are pending at the Commission and to DTV stations that have applied for service area modifications. We addressed this in written testimony for the Low Power Television Hearing as our fourth point of concerns regarding the current legislation.

Further, regardless whether the bill now precludes interference from Class A licenses in *some* instances, the statement itself is a true statement. By placing LPTV stations in vacant channels, whether by desire or necessity to avoid displacement, interference can result to the existing stations and potentially to the digital stations yet to be built. It is a matter of physics.

b) One of the major problems with the legislation is that it would allow the “securing” of channels by LPTV stations before the DTV transition is completed. As drafted, the legislation would provide primary status to qualified LPTV stations and without the proper protections to existing NTSC TV stations and unbuilt DTV stations. Currently, there may be NTSC stations with pending modification applications. Also, there is a need to keep as much flexibility as possible for DTV stations if there should be a need for adjustments during the transition. It is not logical to threaten the DTV transition before it has a chance to get off the ground.

c) The LPTV rules and regulations have always imposed a secondary status on LPTV stations. This bill would change this status—by providing LPTV stations with primary spectrum use. The FCC, during the DTV proceeding, has tried to take into account the concerns of LPTV stations. Unfortunately, until full service DTV stations are substantially settled, there is simply not enough flexibility to accommodate LPTV stations and even TV translators.

Question: You state in many written documents that this legislation goes against the initial FCC ruling that established LPTV stations? You say, correctly, that LPTV owners knew that their licenses were temporary and could be revoked at any time. Is this a correct assessment of your position?

If so, please explain this as justification for the Congress not to reconsider creating a new class of licenses as H.R. 486 does. Because, as I see it, the stations that would qualify for Class A licenses under this bill would have program requirements that are even more stringent than the ones placed on your members. To qualify for

a license under H.R. 486, low-power stations would have to broadcast at least 18 hours a day and broadcast at least 3 hours of local programming.

Can all of your members meet this requirement? If not, why would you object to creating a new class of licenses for stations that do, especially considering the service, jobs and revenue these stations provide to local communities?

Answer: NAB opposes the establishment of a new class of TV licenses that would harm the transition to DTV. At this time, it would be unwise to provide primary status to LPTV stations—even if they meet the qualifications in the legislation. Congress has set a national policy that America's TV stations will transition to digital broadcasting, and the vast majority of stations will do so by 2002—as long as nothing impedes this process. LPTV stations have always been a secondary service. Although many LPTV stations may provide an important service to their viewers, the fact remains that it is the full service TV stations that consumers depend on. Now is not the time to place roadblocks in the way of the DTV transition. Once the DTV dust settles, the FCC can determine how best to accommodate the LPTV stations.

WAPK-TV
May 11, 1999

W.J. "BILLY" TAUZIN
Chairman
Subcommittee on Telecommunications, Trade and Consumer Protection
U.S. House of Representatives
Committee on Commerce
Room 2125
Rayburn House Office Building
Washington, DC 20515-6115

DEAR CHAIRMAN TAUZIN: I want to again thank you for inviting me to testify before the Subcommittee on April 13 on the subject of the Regulatory Classification of Low Power Television Licensees. It was a pleasure to discuss our company's experiences with its WAPK-LP "UPN/30." As I stated in verbally supplementing my written testimony, when I wrote that testimony I was unaware that in some thirty-four TV markets around the U.S., the UPN affiliate is an LPTV operation rather than a full power station!

Following our initial testimony you invited each witness to send to you any supplemental comments. Mine are presented herewith.

Perhaps the greatest surprise to me in the subject hearings was the inclusion in the testimony of the representatives of the National Association of Broadcasters (NAB) and the Federal Communications Commission (FCC) of the suggestion that the FCC might have to carefully consider counting any LPTV station, which achieves the proposed primary status, as a "real" TV station for purposes of the Commission's multiple ownership rules. You and I share the belief that this suggestion was a particularly surprising one for NAB to make, given that organization's consistent efforts to achieve deregulation of existing multiple ownership restrictions involving radio stations, TV stations, and daily newspapers in a given market.

When you asked during the hearings for my comment on this point, I stated that I believed the fact that an LPTV station, which would qualify for primary status under the proposal, would have to air each week several hours of programming originated within its market—a requirement which does not presently exist even for full power TV stations—was sufficient to exempt the LPTV station from being counted the same as a full power station for multiple ownership purposes.

A second reason I believe such stations should be exempted is the fact that LPTV stations presently licensed to parties who are also licensees of one or more radio stations and/or a full power TV station, and/or are the owner of a daily newspaper in the same local market, are among the best examples in America of excellent LPTV broadcasters, who serve their audiences with superior local public affairs, public service, and news programming and other local program features.

How unfair it would be to force the divestiture of any station by local broadcasters and newspaper owners, who complied fully with both the spirit and the letter of the multiple ownership rules when they built their LPTV stations! Frankly it would send a message to such entrepreneurs that the way to really get ahead in the local TV station business is not to build what has always been indisputably legal under the multiple ownership rules, but instead to resort to what many in our industry would call "skirting the rules" by entering into time brokerage agreements or "local marketing agreements" (LMA's) in order to be able to effectively operate not only the full power television station for which one holds a license, but a second or third "LMA'd" full power station as well!

I understand that the Community Broadcasters Association (CBA) has suggested a change in the language of the subject bill, which would in effect “grandfather” those existing LPTV licensees, who have LPTV or radio, full power TV, or daily newspaper interests or multiple LPTV interests in their markets, so that they would not have their primary status LPTV stations counted by the Commission in making multiple ownership determinations.

Finally, a third reason I believe qualifying primary status LPTV stations should not be counted for multiple ownership purposes relates to cable and is perhaps the most significant reason of all. Almost seven out of every ten American households receive their local TV stations via cable; yet even under the proposed law almost no LPTV stations—regardless of status—would enjoy the supreme privilege all full power stations enjoy (even if they don’t originate one minute of local programming each week), “must carry” on area cable systems.

Given the resistance the full power TV industry and the NAB have encountered in their attempt to assure “must carry” status for the federally-mandated digital stations each full service licensee must put on the air by May, 2002, I assume that the NAB would vigorously oppose “must carry” for primary status LPTV stations, regardless of what other local media interests their licensees may have, just as NAB has opposed almost every thing else positive for LPTV and despite the praise that Association’s testimony heaped upon the LPTV industry and the local service it provides.

At the risk of seeming to be “self-serving” (our company has full-service [UHF] TV, LPTV, and radio in the same market) and with all things considered, we agree that “grandfathering” is the best solution. There is ample precedent for this. I believe the history of the broadcasting industry in this country (the almost 38 years I’ve been in the business personally and the 41 years preceding, which I have studied with some intensity) will reveal that the only instance in which “grandfathering” was *not* allowed when ownership restrictions were tightened was when the FCC or its predecessor The Federal Radio Commission (FRC) ruled back in the ’30’s or ’40’s that one owner could not own more than one “standard broadcast station” in the same market. That was at a time when “standard broadcast stations” were all AM stations. There was essentially no FM or TV then (nor was there any cable TV, DBS, MDS, MMDS, etc.).

I thank you again, Mr. Chairman, for the privilege and honor of testifying before the Subcommittee.

Sincerely,

HOUSTON VALLEY BROADCASTING CORPORATION
 GEORGE E. DEVAULT, JR.
President

cc: Mike Sullivan, Executive Director
 Community Broadcasters Association,
 St. Cloud, MN
 Roy Stewart, Chief, Mass Media Bureau
 Federal Communications Commission
 Washington, DC
 Jim May, Executive Vice President
 National Association of Broadcasters
 Washington, DC