

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)
)
Implementation of the) MB Docket No. 23-126
Low Power Protection Act)
)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION

The National Association of Broadcasters (NAB)¹ hereby submits comments in response to the Commission’s Notice of Proposed Rulemaking (NPRM) in the above captioned matter.² NAB appreciates the Commission’s efforts to promptly implement the Low Power Protection Act³ and provide a limited window of opportunity for Low Power Television licensees to apply for primary spectrum use status as Class A television stations.⁴ NAB generally supports the Commission’s proposals to implement the LPPA. We disagree, however, with some commenters who ask the Commission to expand the LPPA’s eligibility criteria beyond the plain statutory language. The LPPA sets forth specific eligibility requirements and limits Class A designation to stations in small markets. In implementing the LPPA, the Commission

¹ The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Implementation of the Low Power Protection Act*, Notice of Proposed Rulemaking, MB Docket Number 23-126, FCC 23-23 (April 14, 2023) (NPRM).

³ Low Power Protection Act, P.L. 117-344, 136 Stat. 6193 (2023) (LPPA).

⁴ NPRM at ¶ 1.

must be guided by these specific requirements and should not unlawfully attempt to redefine television markets as some parties suggest.

II. NIELSEN DMA DEFINITIONS ARE APPROPRIATE

The LPPA plainly limits consideration of applications for new Class A status to those LPTV stations operating “in a Designated Market Area with not more than 95,000 television households.”⁵ The LPPA defines the term “Designated Market Area” as a DMA “determined by Nielsen Media Research or any successor entity,” or a DMA determined by the Commission to be equivalent to the system established by Nielsen.⁶ The Commission has not proposed any alternative definitions for television markets nor has it determined that alternative market definitions are equivalent to Nielsen’s. Nevertheless, in its comments, One Ministries has suggested that the Commission divide hyphenated Nielsen markets, such as the Chico-Redding DMA, apparently in order circumvent the congressionally mandated 95,000 household threshold.⁷ The LPTV Broadcasters’ Association similarly suggests that the Commission instead utilize MSAs or RSAs to define television markets, which would increase Class A eligibility far beyond congressional intent.⁸

Changing the DMA definitions by creating several new, smaller DMAs from existing larger ones or by substituting market definitions used for other purposes contradicts Congress’s express intent in the LPPA and would thus be contrary to law. Further, expanding DMA definitions in this manner could have ramifications concerning network and syndicated

⁵ LPPA, Section (2)(c)(2)(B)(iii).

⁶ LPPA, Section 2(a)(2).

⁷ Comments of One Ministries, Inc. at 2, MB Docket 23-126 (April 3, 2023).

⁸ Letter from Frank Copsidas, LPTV Broadcasters’ Association to Holly Sauer, Barbara Kreisman, and Evan Morris, MB Docket 23-126 (April 12, 2023).

programming exclusivity and cable carriage, and could inadvertently hinder the transition to ATSC 3.0 in nearby larger markets.

The Commission describes a “hyphenated market” as a “television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area.”⁹ Nearly half (42%) of the Nielsen DMAs are hyphenated. So, allowing some or all of these hyphenated DMAs to become separate television markets would create a set of alternative markets that are radically different from Nielsen’s. Similarly, the Office of Management and Budget list of Metropolitan Statistical Areas includes some 390 areas¹⁰ and the list of Rural Service Areas (RSA’s) includes some 427 areas¹¹ in contrast to the 210 Nielsen DMAs. We agree with the Commission that MSAs and RSAs, “which are based on population, appear to have nothing to do with market assignment information or determining television broadcast station markets, unlike Nielsen DMAs.”¹² The Commission has long considered the Nielsen DMAs to define television markets and has never proposed an alternative system of market definitions. If the Commission were to do so here by separating hyphenated markets into smaller geographic areas or using MSA or RSA definitions, it would be establishing alternative market definitions that are wildly different from those established by Nielsen and not “equivalent to” Nielsen DMAs as the LPPA requires.

⁹ *Amendment of Section 76.51 of the Commission’s Rules to Include Merced and Porterville, California in the Fresno-Visalia-Hanford-Clovis*, Report and Order, 15 FCC Rcd 10781 (June 20, 2000).

¹⁰ Office of Management and Budget, Executive Office of the President, OMB Bulletin No. 18-03 (2018) available at: <https://www.bls.gov/bls/omb-bulletin-18-03-revised-delineations-of-metropolitan-statistical-areas.pdf> .

¹¹ *Common Carrier Public Mobile Services Information*, Public Notice, 7 FCC Rcd 742 (1992).

¹² NPRM at ¶ 34.

III. REDEFINING MARKETS COULD HAVE UNINTENDED CONSEQUENCES FOR THE ATSC 3.0 TRANSITION

Because Class A television stations are protected from new interference from full-service television stations, authorization of new Class A stations can effectively block coverage and service improvements by full-service stations. U.S. television broadcasters are in the midst of a transition to ATSC 3.0, which could require temporary or permanent facility changes in some cases. We urge the Commission to limit the potential for creating new interference restrictions that could inadvertently stall or hinder the transition. The areas where the probability of creating such interference conflicts is greatest are those outside of but near large television markets. One reason why the LPPA restricts eligibility to LPTV stations in television markets with fewer than 95,000 television households is to minimize the likelihood of inadvertent impacts in spectrum-constrained large markets. If the Commission were to redefine television markets as some have proposed, a significant number of LPTV stations in neighboring suburban markets could become eligible for designation as Class A stations with significant unintended consequences for the ATSC 3.0 transition. This is yet another reason why the Commission should not modify the existing definition for television markets.

IV. LICENSE STANDARDS AND SUPPORTING DOCUMENTATION

A number of LPTV stations that certified eligibility for elevation to Class A status during the original filing window in 2000 failed to comply with the eligibility requirements on an ongoing basis and ultimately had their Class A status withdrawn.¹³ Under the LPPA, the requirements for designation as a Class A station include (1) a minimum of 18 hours per day

¹³ See, e.g., *Reclassification of License of Class A Television Station W19BR*, Order to Show Cause, 27 FCC Rcd 1914 (2012).

of broadcast programming, (2) an average of at least three hours per week of locally-produced programming, and (3) compliance with the Commission's rules for LPTV stations. Class A stations must comply with the first two requirements on an ongoing basis. Documentation of eligibility and continued eligibility should not be burdensome or difficult to assemble, nor should it exceed requirements applicable to full-service stations. NAB believes that the key requirements for Class A status are near full-time operation and production of local programming. NAB suggests that a statement concerning the station's operating schedule and a list of locally produced programs could be provided at the application stage and as part of existing public file requirements following elevation. For example, a list of locally produced programs could be included as part of the issues/programs list.¹⁴ A specific statement detailing hours of operation could be required as part of the Class A TV continuing eligibility documentation.¹⁵

NAB disagrees with the Commission's proposal that "Class A [stations] must continue to operate in DMAs with not more than 95,000 television households in order to maintain their Class A status."¹⁶ Nielsen DMAs are not static; the market definitions can change from time to time and populations within those markets can grow or shrink. Stations that are properly designated as Class A stations and that serve their communities should not be subject to sudden and unpredictable changes in their regulatory status based on circumstances entirely beyond their control.

¹⁴ 47 CFR 73.3526(e)(11)(i)

¹⁵ 47 CFR 73.3526(e)(17)

¹⁶ NPRM ¶38

V. CONCLUSION

NAB appreciates the Commission's prompt efforts to implement the LPPA. We urge the Commission not to impermissibly expand eligibility criteria, which would contradict express Congressional direction and could potentially have unintended negative consequences for the ATSC 3.0 transition.

Respectfully submitted,

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BROADCASTERS**
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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
Patrick McFadden
Alison Neplokh
Robert Weller

May 15, 2023