



Community Broadcasters Association

THE DTV TRANSITION AND SMALL BUSINESSES; SMALL FIRMS CONTRIBUTING TO A BIG CHANGE?

Testimony of
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on Small Business of the U.S. House of Representatives

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Mr. Chairman and Members of the Subcommittee, my name is Ronald J. Bruno. I am President of the Community Broadcasters Association (CBA), the trade association of the nation's Class A and low power television stations (LPTV). I am also the President and an owner of Bruno-Goodworth Network, operator of several Class A-eligible and LPTV stations in Western Pennsylvania, Northeastern Ohio, and nearby West Virginia. I thank you for the opportunity to be heard testify today, because I want emphasize how actively the Class A/LPTV industry supports the transition to digital television broadcasting.

As the Subcommittee knows, only the nation's full power television stations are subject to the February 17, 2009, deadline to transition to digital operation. Full power stations represent only about 20% of the nation's TV transmitters. Over 7,200 transmitters are operated by Class A, LPTV, and TV Translator stations, and the vast majority of those stations will continue analog service to the public after next February 17th.

Thus statements you often hear that "television stations will no longer transmit over-the-air in analog format," and "viewers with analog TV sets that use an antenna won't be able to watch TV any more because their sets won't work," are simply not accurate. Moreover, **almost all Class A and LPTV stations** that these statements ignore **are operated by small -- indeed very small -- businesses.**

Many provide specialized niche and minority programming formats that are of particular interest to the low-income, elderly disabled, non-English speaking and minority populations that are particularly vulnerable during the transition process. In addition, these stations often provide **entry-level job opportunities** to members of the local community and provide an outlet where

other **small businesses can afford to advertise** because rates are much lower than those of full power stations that charge big city mass audience prices.

Efforts of both the government and private sector are headed toward a crushing impact on Class A and LPTV small business operators. This impact will affect not only the future of the stations themselves but also their employees and local advertising clients. It does not have to happen, and there is no reason to let it to happen. I ask this Subcommittee to understand the impending disgrace and to act to help implement a remedy.

Congress provided funds to subsidize the purchase of converter boxes, so that the public can view digital signals on old analog TV receivers. However, when the National Telecommunications and Information Administration (NTIA) established the converter box program, it had all eyes on big business and closed its eyes to the impact on our small business broadcasters when it refused to allow the inclusion of a simple analog tuner in the converter boxes, on the ground that the tuner would be a forbidden "feature or function," even though NTIA approved boxes include parental controls, captioning, favorite program selection, and other features, and even though it not only permitted but required parental controls and captioning for the deaf to comply with other applicable laws. NTIA ignored the All Channel Receiver Law of 1962 (47 USC Sec. 303(s)) -- a law that was enacted in the 1960's to protect smaller broadcasters who were relegated to less desirable UHF channels and who would have been shut out of TV receivers that did not have UHF tuners, just as Class A and LPTV stations are being shut out now by converter boxes that do not have analog tuners. The FCC has consistently interpreted that law over the years to require all TV receiving devices (which would include converter boxes) to be capable of receiving all stations broadcasting in all formats. But when CBA asked the FCC to enforce the law this time, the FCC ignored its obligation and fell silent, which is why CBA has been forced to seek relief from the Court of Appeals in Washington.

NTIA permits converter boxes to "pass through" analog signals, which means not blocking them but also not allowing the viewer to select which channel to watch without picking a separate TV remote control. However, as of May 5, 2008, only 14 out of 82 converter box models approved by NTIA for the coupon subsidy have the passive analog pass-through feature. **And none of those boxes can be purchased today.** CBA's officers search several times a week for analog pass-through boxes, so that these models can be promoted on CBA's website. They are simply not to be had, either in retail stores or on the Internet. Some of these models are listed, but they are uniformly not available yet or sold out. **So attempts by our small businesses to look out for ourselves by promoting products that do not hurt us are futile.**

Some manufacturers have advised CBA that pass-through boxes will be available in late May or early June. However, DTV subsidy coupons expire in 90 days, and tens if not hundreds of thousands will expire before these models can be purchased. Thus even if CBA promotes pass-through boxes to viewers of its stations, those viewers cannot buy the boxes and will lose their coupon subsidy if they wait.

Every box without analog pass-through that is installed by a consumer -- that is, every box being sold today -- acts as a complete barrier to viewing analog Class A and LPTV signals. With only about 13% of households not wired to cable or satellite television systems, the universe of over-the-air viewers is small enough to begin with; and Class A and LPTV stations have no cable carriage rights except below the top 160 Metropolitan Statistical areas and have no satellite carriage rights at all. **So every converter box that is hooked up to a TV set today removes a TV set from the already small potential universe of viewers for small-business-owned TV broadcasters.** It is a not-so-slowly tightening noose around the neck of small businesses that is inexcusable.

To make things worse, both government and big business private industry are “educating” consumers about the transition without telling them about Class A and LPTV signals and are in fact misleading consumers. While NTIA’s website has a page about Class A/LPTV viewing, before you get to that page, you must pass through a page that says “286 days to *end of analog broadcasts*.”¹ While the FCC has published an information sheet about Class A and LPTV broadcasts, their home page says “*DTV Transition Deadline* February 17, 2009.” While the National Association of Broadcasters has established a website called “LPTVanswers.com,” it is distributing public service announcements that talk about the *end of analog broadcasting* and “*your TV set won’t work*” after February 17, 2009 without a converter box². The FCC requires full power TV stations to broadcast announcements about the transition; but while one section of the regulations requires mention of the fact that a converter box will not be needed to watch LPTV stations, the section used by the vast majority of stations has no requirement regarding the content of the announcement, thus allowing stations to use the misleading NAB announcements that ignore the needs of Class A and LPTV viewers.

The public does not like the situation any more than CBA does. CBA operates a website, www.keepuson.com, where we answer questions from the public about the transition. Here are the kinds of questions we are receiving that we have posted and answered on our website:

“Why are you taking channels off TV that we like? Some people do not have the money to buy a box. This is very unfair.” D. J. - Cincinnati, OH.

“Question, will I be able to keep channel 16 Telemundo and 51 America channel: Spanish channels -- want them for sure.” M. N. - Nampa, ID

“Stop screwing around with things! Everything is just great as it is now! Your [*sic*] creating a problem where there wasn’t one before. You re part of the

¹ <https://www.dtv2009.gov/>.

² CBA representatives have viewed some of these announcements that superimpose a comment about LPTV in small print that disappears faster than the mandatory disclosure of credit terms disclosure in a fast-talking car dealer’s advertisement.

problems in America instead of part of the solution! Get it right and leave it alone!" L.K. - Boise, ID

"I have the RCA DTA-8008, but it does not have the analog pass through, or at least I could not figure out how to get it to work. I can get only digital stations." F. - Wichita, KS

"How does one find where I can get the Magnavox tb100mg9 - so far, walmart and radioshack in my city do not carry these - Will these two stores get them - I have only 60 days to use coupons." D.B. - Okeechobee, FL

I believe that the shrewdest public policy planner with evil intent would have been hard-pressed to plan and create a program that leaves so many small businesses behind in so many ways as is happening with the DTV transition and converter box debacle.

I would like to suggest that **the real answer to the problem of being left behind is not to be left behind.** In other words, Congress must help Class A, LPTV, and TV Translator stations complete their own transition to digital operation sooner rather than later.

While the cost of converting an entire station, including studio equipment, to digital operation is substantial, conversion of just the transmission facilities, which are the key components, can be done for only \$150,000 per station. In other words, \$150,000 will undo the converter box debacle, because it will once again allow viewers to choose *any* TV station they want to watch, and it will also bring the spectrum efficiency of digital operation to the nation's small business TV transmitters that so far have been largely left out.

. Last month, \$19.6 billion dollars was raised in the television spectrum auction. The budgeted prediction was only \$10 billion, which means that there is a **\$9.6 billion dollar surplus from this auction.**

I respectfully request that the Members of the Subcommittee initiate and sponsor legislation to **provide a grant of \$150,000 to each Class A and LPTV station**, so that our industry can quickly move to digital operation. This money will not be taxpayer dollars but rather the excess auction money coming from the private sector auction. The grants can be made by modifying an **existing program**, already created by the Budget Deficit Reduction Act of 2005, which created a fund to reimburse LPTV stations for conversion to digital operation but was limited to rural communities with a population of fewer than 10,000 persons. That program left out the hundreds of stations in larger communities, many of which serve minority and ethnic populations, and which are more likely to hire employees and serve as useful advertising outlets for small businesses.

CBA also hopes that you will ask your colleagues on the Commerce Committee to take steps to amend the Budget Deficit Reduction Act of 2005 to require NTIA to extend the expiration date of subsidy coupons from 90 days to 270 days, so that the public can buy

converter boxes that do not deprive them of viewing choices and continue to give them access to Class A and LPTV stations operated by small businesses.

Keep in mind that our industry did not ask to be put in this situation – we were put into this quagmire by the incredibly short-sighted neglect of NTIA and the refusal of the FCC to act to enforce the law and its own regulations governing TV tuners. The simple and sound solution of converting all stations to digital operation quickly will surely further the efficiencies gained by digital operation, preserve jobs and foster the creation of new jobs, keep small businesses alive, allow small businesses to advertise on television, and promote the cause of localism, all without disrupting the full power TV digital transition or the continued distribution converter boxes, defective and illegal though they be.

If Congress does not act, small business television broadcasters will be threatened with bankruptcy or loan defaults, contributing to the economic damage the country is now suffering started by the sub-prime mortgage problem.

The clock is ticking away quickly. There is no justification for using taxpayer dollars to subsidize devices that violate the spirit and the letter of the law and focus their harm on small business TV broadcasters, reducing the diversity of broadcast voices, and actually depriving viewers of the ability to choose some signals they may want to watch.

I thank the Subcommittee for its attention and look forward to working with you on and your staff to save small business broadcasters and the jobs and programming they provide to the public.

Respectfully submitted,

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PROPOSED LEGISLATION

Amend Section 3009 of the Budget Deficit Reduction Act of 2005, Public Law 109-171 (February 8, 2006), as follows:

SEC. 3009. LOW-POWER TELEVISION AND TRANSLATOR UPGRADE PROGRAM**(a) ESTABLISHMENT. --**

(1) The Assistant Secretary shall make payments of not to exceed \$65,000,000, in the aggregate, during fiscal 2009 from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each licensee of an eligible television translator or television booster station may receive reimbursement for equipment to upgrade such stations from analog to digital in eligible rural communities, as that term is defined in section 610(b)(2) of the Rural Electrification Act of 1937 (7 U.S.C. 950bb(B)(2)). Such reimbursement shall be issued to eligible stations no earlier than October 1, 2008.* Priority reimbursements shall be given to eligible low power television translator or television booster stations in which the license is held by a non-profit corporation and eligible stations that serve rural areas of fewer than 10,000 viewers.

(2) The Assistant Secretary shall make payments of not to exceed \$475,000,000, in the aggregate, during fiscal 2009 from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each licensee of an eligible Class A or low-power television station may receive reimbursement in the amount of \$150,000 for equipment to upgrade such stations from analog to digital. Such reimbursement shall be issued to eligible stations no earlier than October 1, 2008.

(b) ELIGIBLE STATIONS. -- For purposes of this section, the terms “eligible television translator or television booster station and “eligible Class A or low power station” mean a low-power television broadcast station, Class A television station, television translator station, or television booster station --

(1) that is itself broadcasting exclusively in analog format; and

(2) that has not converted from analog to digital operations prior to the date of initial enactment of the Digital Television Transition and Public Safety Act of 2005.

**Note: Senators Inouye and Stevens have sponsored separate legislation to advance the date when reimbursement may be issued.*