

**Emerging Technologies Subcommittee Recommendation to the  
Federal Communications Commission's  
Advisory Committee on Diversity for Communications in the Digital Age:**

**Recommendation on S-Class Television Licenses**

**Presented to the full Committee by the Emerging  
Technologies Subcommittee, by Unanimous Vote,  
October 23, 2008**

**Adopted by the full Committee by Unanimous Vote,  
October 28, 2008**

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The Emerging Technologies Subcommittee of the FCC Advisory Committee on Diversity for Communications in the Digital Age recommends that the full Advisory Committee commend to the Commission the desirability of issuing a Notice of Proposed Rulemaking to consider the Media Access Project ("MAP") proposal for a new class of stations ("Class S" stations) that would share time with the original licensees of multiplexed, full power, commercial digital TV stations ("Original Licensees"). The Class S stations would compensate the Original Licensees in return for the use of their transmitter and transmission facilities. Making spectrum available for Class S usage would be voluntary.

The Committee supports the leasing of DTV subchannels and regards the S-Class Licenses proposal as additional option available to a broadcaster. The concept of an S-Class Licenses is that a DTV licensee could voluntarily assign the right to operate a DTV sub-channel to another entity, and thus essentially monetize the channel. MAP first proposed and developed this concept in 1992, and proposed the issue again at the Commission's July 29, 2008 *En Banc* Hearing on Communications Financing.<sup>1</sup> The MAP proposal is attached.

On September 27, 2007, upon the recommendation of the Emerging Technologies Subcommittee, the Diversity Committee unanimously adopted a "Recommendation on Leasing or Ownership of FM or DTV Sub-channels Under the Share-Time Rule." The recommendation stated:

The Subcommittee on Emerging Technologies recommends that the full Advisory Committee commend to the Commission, for the issuance of a notice or notices of proposed rulemaking, the desirability of a mechanism that would permit FM radio or digital television licensees to lease or otherwise permit full-time or part-time use of portions of their multiplexed program feeds for the transmission of programming by unaffiliated entities which would be separately licensed by the Commission under the share-time rule, 47 C.F.R. §73.1715. If the Commission determines that it lacks the power to adopt such a procedure, the Commission should seek the requisite authority from Congress.

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<sup>1</sup> See Testimony of Andrew Jay Schwartzman, President and CEO of Media Access Project, FCC *En Banc Hearing* Hearing on Overcoming Barriers to Communications Financing, July 29, 2008.

The Commission and the Advisory Committee have found that access to capital is a significant barrier to entry for small, minority and woman owned broadcast entrepreneurs. This share-time proposal would address this problem by providing entrepreneurs with the choice of a route to entry that closely resembles traditional broadcast ownership as opposed to leasing. Raising capital for a lease has proven difficult for small businesses for two reasons: (1) a lease is not secured by an asset that resembles collateral, and (2) the sunk costs of a lease rapidly become non-recoverable when the lease is terminated. Similar considerations were among the original motivations for the use of the share-time rule in AM radio and VHF television in the 1950s. In addition, the share-time rule fosters ownership and programming diversity without the need to resort to the time-consuming and expensive auction process. Finally, since share-times would serve as an additional voluntary option available to the DTV or FM station licensee choosing to monetize its spectrum, the proposal would benefit broadcasters and the public by facilitating the growth of DTV and HD service.

On October 1, 2007, the Diversity and Competition Supporters – 29 national organizations – endorsed the Subcommittee’s recommendation<sup>2</sup> and developed the legal underpinnings of the recommendation’s operating paradigm.<sup>3</sup> DCS observed that “[e]specially attractive candidates to occupy this spectrum would be new entrants serving local multicultural and multilingual audiences”, DCS proposed that to afford minorities and women a headstart in accessing this spectrum, the Commission should “initially limit the assignment of a DTV subchannel or HD channel to socially and economically disadvantaged businesses (“SDBs”), and further, “as a further incentive to promote minority and women ownership, a broadcaster that assigns to an SDB a DTV subchannel or HD channel at a fraction of fair market value could be permitted to assign a second DTV subchannel or HD channel at fair market value.”<sup>4</sup> DCS predicted that the acquisition by minorities of just 20% of the channels “would represent the greatest advance in ownership diversity since the quintupling in minority ownership from 1978 to 1995 that was largely brought about by the Tax Certificate Policy.”<sup>5</sup>

MAP’s S-Class proposal refines the Diversity Committee’s DTV share-time concept. In both formulations, the relationship between the DTV station and the sub-channel owner would be analogous to the relationship between the owner of a condominium building and the owners of condominium units in the building. The DTV sub-channel or HD channel licensee would control its channel’s content, while its engineering would continue to be handled by the DTV or FM station licensee for a fee. In this paradigm, the DTV sub-channel or HD channel licensee’s control of its channel’s programming is analogous to a residential condominium owner’s enjoyment of his unit, while the DTV sub-channel or HD channel’s engineering is analogous to the condominium building owner’s management of the building’s common areas.

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<sup>2</sup> Initial Comments of the Diversity and Competition Supporters in MB Docket 06-121 (Media Ownership), October 1, 2007, pp. 41-46.

<sup>3</sup> Id. at 43-46.

<sup>4</sup> Id. at 42.

<sup>5</sup> Id.

**MEDIA ACCESS PROJECT**  
**A PROPOSAL FOR DIVERSIFYING ACCESS**  
**TO DIGITAL TV SPECTRUM**

**PRESENTED BY**  
**ANDREW JAY SCHWARTZMAN**  
**PRESIDENT AND CEO, MEDIA ACCESS PROJECT**  
**TO THE FEDERAL COMMUNICATIONS COMMISSION'S EN BANC MEETING**  
**BARNARD COLLEGE**  
**JULY 29, 2008**

The Commission should create a new class of full power commercial TV licenses (Class "S"). Class S licensees would broadcast using the multiplexed facilities of full power commercial digital TV licensees. They would compensate the "main" licensee for services provided in their use of the main licensee's transmitter and transmission facilities. Class S licenses would be conditioned on a requirement that, if the "main" licensee wishes to broadcast in high definition, the Class S licensee must lease spectrum to the "main" licensee for that purpose, for a maximum of six hours per day.

Making spectrum available for Class S usage would be voluntary. Interested full power licensees would assign a portion of their bitstream to a qualified applicant in an arm's-length transaction following the ordinary procedures set forth in Section 309 of the Communications Act.

***Qualifications for Class S Licensure***

Qualified socially and economically disadvantaged business entities or Class A licensees would be permitted to apply for Class S licenses.

***Conditions and Benefits of Class S Licensees***

As full power licensees, Class S licensees would be eligible for cable must-carry pursuant to Section 614 of the Communications Act. They would also have the same public interest obligations as other full power TV licensees, except that Class S licensees would not be permitted to carry commercial matter for more than 50% of their broadcast day.

***Compensation***

Compensation for use of the main licensee's facilities (the "facilities charge") would be determined by baseball-type arbitration with a reserve price that assures amortization of the main licensee's equity.

Compensation for main licensee's use of Class S licensee's spectrum for high definition transmissions would be based on the hourly cost of the facility charge weighted for the time of day of broadcast. The formula would allow for a reasonable rate of return.

***Benefits of the Proposal***

- Provides a new revenue stream for incumbent broadcasters.
- Promotes diversity in the marketplace of ideas.
- Provides a recognized form of collateral for Class S licensees.
- No legislation is required.