

COMMUNITY BROADCASTERS PROTECTION ACT OF 1999

OCTOBER 14, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

R E P O R T

[To accompany H.R. 486]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 486) to amend the Communications Act of 1934 to require the Federal Communications Commission to preserve low-power television stations that provide community broadcasting, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Community Broadcasters Protection Act of 1999".

SEC. 2. FINDINGS.

The Congress finds the following:

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

(2) These low-power broadcasters have operated their stations in a manner consistent with the programming objectives and hours of operation of full-power broadcasters providing worthwhile services to their respective communities while under severe license limitations compared to their full-power counterparts.

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

(4) The passage of the Telecommunications Act of 1996 has added to the uncertainty of the future status of these stations by the lack of specific provisions regarding the permanency of their licenses, or their treatment during the transition to high definition, digital television.

(5) It is in the public interest to promote diversity in television programming such as that currently provided by low-power television stations to foreign-language communities.

SEC. 3. PRESERVATION OF LOW-POWER COMMUNITY TELEVISION BROADCASTING.

Section 336 of the Communications Act of 1934 (47 U.S.C. 336) is amended—

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

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

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

“(1) CREATION OF CLASS A LICENSES.—

“(A) RULEMAKING REQUIRED.—Within 120 days after the date of enactment of the Community Broadcasters Protection Act of 1999, the Commission shall prescribe regulations to establish a class A television license to be available to licensees of qualifying low-power television stations. Such regulations shall provide that—

“(i) the license shall be subject to the same license terms and renewal standards as the licenses for full-power television stations except as provided in this subsection; and

“(ii) each such class A licensee shall be accorded primary status as a television broadcaster as long as the station continues to meet the requirements for a qualifying low-power station in paragraph (2).

“(B) NOTICE TO AND CERTIFICATION BY LICENSEES.—Within 30 days after the enactment of the Community Broadcasters Protection Act of 1999, the Commission shall send a notice to the licensees of all low-power television licenses that describes the requirements for class A designation. Within 60 days after such date of enactment, licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. Absent a material deficiency, the Commission shall grant certification of eligibility to apply for class A status.

“(C) APPLICATION FOR AND AWARD OF LICENSES.—Consistent with the requirements set forth in paragraph (2)(A) of this subsection, a licensee may submit an application for class A designation under this paragraph within 30 days after final regulations are adopted pursuant to subparagraph (A) of this paragraph. Except as provided in paragraphs (6) and (7), the Commission shall, within 30 days after receipt of an application of a licensee of a qualifying low-power television station that is acceptable for filing, award such a class A television station license to such licensee.

“(D) RESOLUTION OF TECHNICAL PROBLEMS.—The Commission shall act to preserve the service area of each low-power television licensee pending the final resolution of the class A application of such licensee. If, after granting

certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications, as necessary, to ensure replication of the full-power digital television applicant's service area, as provided for in section 73.622 of the Commission's regulations (47 C.F.R. 73.622).

"(2) QUALIFYING LOW-POWER TELEVISION STATIONS.—For purposes of this subsection, a station is a qualifying low-power television station if—

"(A)(i) during the 90 days preceding the date of enactment of the Community Broadcasters Protection Act of 1999—

"(I) such station broadcast a minimum of 18 hours per day;

"(II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and

"(III) such station was in compliance with the Commission's requirements applicable to low-power television stations; and

"(ii) from and after the date of its application for a class A license, the station is in compliance with the Commission's operating rules for full-power television stations; or

"(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.

"(3) COMMON OWNERSHIP.—No low-power television station authorized as of the date of enactment of the Community Broadcasters Protection Act of 1999 shall be disqualified for a class A license based on common ownership with any other medium of mass communication.

"(4) ISSUANCE OF LICENSES FOR ADVANCED TELEVISION SERVICES TO TELEVISION TRANSLATOR STATIONS AND QUALIFYING LOW-POWER TELEVISION STATIONS.—The Commission is not required to issue any additional license for advanced television services to the licensee of a class A television station under this subsection, or to any licensee of any television translator station, but shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application. Such new license or the original license of the applicant shall be forfeited after the end of the digital television service transition period, as determined by the Commission. A licensee of a low-power television station or television translator station may, at the option of licensee, elect to convert to the provision of advanced television services on its analog channel, but shall not be required to convert to digital operation until the end of such transition period.

"(5) NO PREEMPTION OF SECTION 337.—Nothing in this subsection preempts or otherwise affects section 337 of this Act.

"(6) INTERIM QUALIFICATION.—

"(A) STATIONS OPERATING WITHIN CERTAIN BANDWIDTH.—The Commission may not grant a class A license to a low-power television station for operation between 698 and 806 megahertz, but the Commission shall provide to low-power television stations assigned to and temporarily operating in that bandwidth the opportunity to meet the qualification requirements for a class A license. If such a qualified applicant for a class A license is assigned a channel within the core spectrum (as such term is defined in MM Docket 87–286, February 17, 1998), the Commission shall issue a class A license simultaneously with the assignment of such channel.

"(B) CERTAIN CHANNELS OFF-LIMITS.—The Commission may not grant under this subsection a class A license to a low-power television station operating on a channel within the core spectrum that includes any of the 175 additional channels referenced in paragraph 45 of its February 23, 1998, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order (MM Docket No. 87–268). Within 18 months after the date of enactment of the Community Broadcasters Protection Act of 1999, the Commission shall identify by channel, location, and applicable technical parameters those 175 channels.

"(7) NO INTERFERENCE REQUIREMENT.—The Commission may not grant a class A license, nor approve a modification of a class A license, unless the applicant

or licensee shows that the class A station for which the license or modification is sought will not cause—

- “(A) interference within—
 - “(i) the predicted Grade B contour (as of the date of enactment of the Community Broadcasters Protection Act of 1999, or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date) of any television station transmitting in analog format; or
 - “(ii)(I) the digital television service areas provided in the DTV Table of Allotments, (II) the areas protected in the Commission’s digital television regulations (47 C.F.R. 73.622(e) and (f)), or (III) the digital television service areas of stations subsequently granted by the Commission prior to the filing of a class A application;
- “(B) interference within the protected contour of any low-power television station or low-power television translator station that—
 - “(i) was licensed prior to the date on which the application for a class A license, or for the modification of such a license, was filed;
 - “(ii) was authorized by construction permit prior to such date; or
 - “(iii) had a pending application that was submitted prior to such date; or
- “(C) interference within the protected contour of 80 miles from the geographic center of the areas listed in section 22.625(b)(1) or 90.303 of the Commission’s regulations (47 C.F.R. 22.625(b)(1) and 90.303) for frequencies in—
 - “(i) the 470–512 megahertz band identified in section 22.621 or 90.303 of such regulations; or
 - “(ii) the 482–488 megahertz band in New York.”.

PURPOSE AND SUMMARY

H.R. 486, the Community Broadcasters Protection Act of 1999, will ensure that many communities across the nation will continue to have access to free, over-the-air low-power television (LPTV) stations, even as full-service television stations proceed with their conversion to digital format. In particular, H.R. 486 requires the Federal Communications Commission (FCC) to provide certain qualifying LPTV stations with “primary” regulatory status, which in turn will enable these LPTV stations to attract the financing that is necessary to provide consumers with critical information and programming. At the same time, recognizing the importance of, and the engineering complexity in, the FCC’s plan to convert full-service television stations to digital format, H.R. 486 protects the ability of these stations to provide both digital and analog service throughout their existing service areas.

BACKGROUND AND NEED FOR LEGISLATION

The basics of low-power television

The FCC began awarding licenses for low-power television service in 1982. Low-power television service is a relatively inexpensive and flexible means of delivering programming tailored to the interests of viewers in small localized areas. It also ensures that spectrum allocated for broadcast television service is more efficiently used and promotes opportunities for entering the television broadcast business.

The FCC estimates that there are more than 2,000 licensed and operational LPTV stations, about 1,500 of which are operated in the continental United States by 700 different licensees in nearly

750 towns and cities.¹ LPTV stations serve rural and urban communities alike, although about two-thirds of all LPTV stations serve rural communities. LPTV stations in urban markets typically provide niche programming (e.g., bilingual or non-English programming) to under-served communities in large cities. In many rural markets, LPTV stations are consumers' only source of local, over-the-air programming. Owners of LPTV stations are diverse, including high school and college student populations, churches and religious groups, local governments, large and small businesses, and even individual citizens.

From an engineering standpoint, the term "low-power television service" means precisely what it implies, i.e., broadcast television service that operates at a lower level of power than full-service stations. Specifically, LPTV stations radiate 3 kilowatts of power for stations operating on the VHF band (i.e., channels 2 through 13), and 150 kilowatts of power for stations operating on the UHF band (i.e., channels 14 through 69). By comparison, full-service stations on VHF channels radiate up to 316 kilowatts of power, and stations on UHF channels radiate up to 5,000 kilowatts of power. The reduced power levels that govern LPTV stations mean these stations serve a much smaller geographic region than do full-service stations. LPTV signals typically extend to a range of approximately 12 to 15 miles, whereas the originating signal of full-service stations often reach households 60 or 80 miles away.

Compared to its rules for full-service television station licensees, the FCC's rules for obtaining and operating an LPTV license are minimal. But in return for ease of licensing, LPTV stations must operate not only at reduced power levels but also as "secondary" licensees. This means LPTV stations are strictly prohibited from interfering with, and must accept signal interference from, "primary" licensees, such as full-service television stations. Moreover, LPTV stations must yield at any point in time to full-service stations that increase their power levels, as well as to new full-service stations.

Low-power television's uncertain future

The video programming marketplace is intensely competitive. The three largest broadcast networks that once dominated the market now face competition from several emerging broadcast and cable networks, cable systems, satellite television operators, wireless cable, and even the Internet. Low-power television plays a valuable, albeit modest, role in this market because it is capable of providing locally-originated programming to rural and urban communities that have either no access to local programming, or an over-abundance of national programming.

Low-power television's future, however, is uncertain. To begin with, LPTV's secondary regulatory status means a licensee can be summarily displaced by a full-service station that seeks to expand its own service area, or by a new full-service station seeking to enter the same market. This cloud of regulatory uncertainty necessarily affects the ability of LPTV stations to raise capital over the

¹LPTV stations are distinct from so called "translators." Whereas LPTV stations typically offer original programming, translators merely amplify or "boost" a full-service television station's signal into rural and mountainous regions adjacent to the station's market.

long-term, irrespective of an LPTV station's popularity among consumers.

The FCC's plan to convert full-service stations to digital substantially complicates LPTV stations' already uncertain future. In its digital television (DTV) proceeding, the FCC adopted a table of allotments for DTV service that provided a second channel for each existing full-service station to use for DTV service in making the transition from the existing analog technology to the new DTV technology. These second channels were provided to broadcasters on a temporary basis. At the end of the DTV transition, which is currently scheduled for December 31, 2006, they must relinquish one of their two channels.

In assigning DTV channels, the FCC maintained the secondary status of LPTV stations (as well as translators). In order to provide all full-service television stations with a second channel, the FCC was compelled to establish DTV allotments that will displace a number of LPTV stations, particularly in the larger urban market areas where the available spectrum is most congested.

The FCC's plan also provides for the recovery of a portion of the existing broadcast television spectrum so that it can be reallocated to new uses. Specifically, the FCC provided for immediate recovery of broadcast channels 60 through 69, and for recovery of broadcast channels 52 through 59 at the end of the DTV transition. As further required by Congress under the Balanced Budget Act of 1997,² the FCC has completed the reallocation of broadcast channels 60 through 69. Existing analog stations, including LPTV stations and a few DTV stations, are permitted to operate on these channels during the DTV transition. But at the end of the transition, all analog broadcast TV stations will have to cease operation, and the DTV stations on broadcast channels 52 through 69 will be relocated to new channels in the DTV core spectrum. As a result, the FCC estimates that the DTV transition will require about 35 to 45 percent of all LPTV stations to either change their operation or cease operation. Indeed, some full-service stations have already "bumped" several LPTV stations a number of times, at substantial cost to the LPTV station, with no guarantee that the LPTV station will be permitted to remain on its new channel in the long term.

The Committee, therefore, seeks to provide some regulatory certainty for low-power television service. The Committee recognizes that, because of emerging DTV service, not all LPTV stations can be guaranteed a certain future. Moreover, it is not clear that all LPTV stations should be given such a guarantee in light of the fact that many existing LPTV stations provide little or no original programming service.

Instead, the Committee seeks to buttress the commercial viability of those LPTV stations which can demonstrate that they provide valuable programming to their communities. The Committee's record reflects that there are a significant number of LPTV stations which broadcast programming—including locally originated programming—for a substantial portion of each day. From the consumers' perspective, these stations provide video programming that is functionally equivalent to the programming they view on full-

² See 47 U.S.C. § 337.

service stations, as well as national and local cable networks. Consequently, these stations should be afforded roughly similar regulatory status. H.R. 486, the Community Broadcasters Protection Act of 1999, will achieve that objective, and at the same time, protect the transition to digital.

HEARINGS

The Subcommittee on Telecommunications, Trade, and Consumer Protection met on April 13, 1999, and held an oversight hearing on the Regulatory Classification of Low Power Television Licensees. The Subcommittee heard testimony from the following witnesses: Mr. Roy J. Stewart, Chief, Mass Media Bureau, Federal Communications Commission, accompanied by Mr. Keith Larson, Associate Chief, Engineering, Mass Media Bureau, Federal Communications Commission; Mr. James C. May, Executive Vice President, National Association of Broadcasters; Mr. Arthur D. Stamler, General Manager, WAZT-LPTV (Woodstock, Virginia); Mr. Michael Sullivan, Executive Director, Community Broadcasters Association; Mr. George E. DeVault, Jr., President, Holston Valley Broadcasting Corporation; and Mr. Ron Bruno, General Manager and Owner, WBGN-TV (Pittsburgh, Pennsylvania). In addition, the Honorable William E. Kennard, Chairman of the Federal Communications Commission, submitted testimony for the record.

COMMITTEE CONSIDERATION

On July 29, 1999, the Subcommittee on Telecommunications, Trade, and Consumer Protection met in open markup session and approved H.R. 486 for Full Committee consideration, amended, by a voice vote. On August 5, 1999, the Full Committee met in open markup session and ordered H.R. 486 reported to the House, amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 486 reported. An Amendment in the Nature of a Substitute by Mr. Norwood, #1, that (1) requires the Federal Communications Commission (FCC) to make modifications to ensure replication of a full power station's signal should any technical problems arise due to the grant of a Class A license to a low power television (LPTV) station; (2) permits television translators to qualify for Class A advanced television licenses in the same manner as LPTV stations; and (3) strengthens the non-interference requirements for both digital and analog service areas of stations subsequently granted by the FCC prior to the filing of a Class A application, was agreed to by a voice vote. A motion by Chairman Bliley to order H.R. 486 reported to the House, amended, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held an oversight hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 486, the Community Broadcasters Act of 1999, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 1, 1999.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 486, the Community Broadcasters Protection Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp, who can be reached at 226-2860.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 486—Community Broadcasters Protection Act of 1999

Summary

H.R. 486 would direct the Federal Communications Commission (FCC) to establish rules and procedures under which certain low-power television stations (LPTV stations) could change their regu-

latory status and associated broadcast rights. The FCC would be directed to develop the rules and approve applications within six months after enactment of the bill.

CBO expects that implementing H.R. 486 would result in the net loss of about \$95 million in offsetting receipts from spectrum auctions in 2002. The bill's changes could lead to a loss of additional amounts in future years, but CBO estimates that there would be no additional impact through 2007, when the FCC's authority to auction spectrum is scheduled to expire. Because the bill would affect direct spending, pay-as-you-go procedures would apply. We estimate that the bill would have no net effect on discretionary spending because the FCC is authorized under current law to collect fees from the discretionary spending because the FCC is authorized under current law to collect fees from the telecommunications industry sufficient to offset the cost of its regulatory and applications activities.

H.R. 486 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments.

Background

LPTV stations are broadcast stations that transmit signals at much lower power levels than conventional TV stations. Under current policy, LPTV stations are licensed as secondary users of the part of the radio spectrum allocated to television broadcasting, which means they can be replaced at any time if the FCC allocates frequencies to primary users, such as full-power TV stations. The ongoing transition to digital television (DTV) will reduce the amount of spectrum allocated for TV broadcasting and will lead the FCC to displace or even revoke the licenses of many LPTV broadcasters. Specifically, the frequencies now used for channels 52 through 69 will be reallocated for other purposes. The remaining spectrum (that used by channels 2 through 51, also known as the core) should be sufficient to accommodate all existing full-power stations, but may not support all existing LPTV stations. Accommodating secondary licensees is especially difficult during the transition to DTV because full-power stations are temporarily using two channels—one for analog and one for digital broadcasts. Pending applicants for new, full-power analog stations may also claim channels now used by secondary licensees. Hundreds of LPTV stations are now in the process of trying to avoid permanent displacement by obtaining alternative channels in the core or by adjusting their operations to accommodate primary licensees.

In addition, the FCC has indicated that it will auction channels within the core that will not be used by primary licensees once the transition to DTV is complete. According to industry and agency analysts, those auctions could include spectrum that will no longer be needed for analog stations or interference buffers as well as spectrum used only by secondary licensees. Recent FCC rulings suggest that such channels will be auctioned in 2002, consistent with the terms of the Balanced Budget Act of 1997.

H.R. 486 would create a new Class A license for LPTV stations that would give eligible stations primary status. Licensees would

be eligible for Class A status if they met certain programming requirements or if the FCC deemed it to be in the public interest. Eligible licensees would be granted primary status if they are licensed to operate on certain channels in the core. Eligible stations located on channels 52 through 69 would be given primary status only after they are assigned a channel in the core. Class A licensees and certain other stations also could obtain an additional channel for DTV services, subject to availability. However, the new Class A stations would not be allowed to interfere with existing full-power analog stations or with certain DTV services.

According to the FCC, at least 200 LPTV stations may be eligible for Class A status in fiscal year 2000. Class A licensees may be located in highly valuable markets, such as New York, Los Angeles, and Boston, as well as in mid-size and small markets, such as Orlando, San Antonio, and Nashville. More Class A stations may be added in subsequent years if the FCC provides eligible licensees with a second channel, but these additional licenses would have to be relinquished at the end of the transition.

Estimated cost to the Federal Government

CBO estimates that implementing H.R. 486 would reduce net proceeds from FCC auctions by about \$95 million in 2002. This estimate reflects the potential effects of the bill on proceeds from auctions of TV spectrum for new users and from auctions involving LPTV stations. Based on information from the FCC, we estimate that the bill would have no significant effect on the commission's administrative costs.

Effect on Auctions of Licenses for New Primary Licensees

By increasing the number of primary licensees in the core, H.R. 486 would reduce the number of channels that could be auctioned for new full-power TV stations or other digital services. Whether the FCC would auction frequencies used by LPTV stations under current law is unclear at this time, but implementing H.R. 486 would foreclose that option for the channels occupied by LPTV stations that would have primary status under the bill (i.e., those that would become Class A licensees). To take account of this regulatory uncertainty, CBO assumes that there is a 50 percent chance that the FCC will auction channels used by secondary licensees under current law.

The cost of this legislation would depend on several factors, such as the location of potential Class A licensees and how much their channels would be worth in 2002 if they were auctioned for new full-power stations or digital services. For purposes of this estimate, CBO assumes that 25 percent of the Class A licenses (at least 50, depending on how many stations gain primary status) would affect auction proceeds in 2002. This estimate reflects our expectation that most of the Class A stations would be in small markets with relatively low market values. Our estimate also excludes the potential effects on some major markets, such as New York, Los Angeles, and Philadelphia, because we expect that few slots will be auctioned in 2002 in certain congested markets until full-power stations return their analog channels at the end of the transition period (sometime after 2007).

Data on the value of broadcast services are largely limited to information on the sale of existing stations. According to industry sources, existing TV stations sold for an average of about \$30 million in 1997. For the purposes of this estimate, we used an average of \$25 million because we are excluding some of the top markets from our analysis of the cost of this bill. Based on agency sources, CBO assumes that the value of the spectrum assigned for such stations represents about 50 percent of the sales price of an operating station, with the remainder attributable to a station's tangible assets, good will, and other intangible assets. This suggests current spectrum values of about \$12 million per channel for stations in mid-sized markets. This average is consistent with CBO's analysis of proceeds from the upcoming auction of primary licenses for broadcast services.

CBO expects that the market value of channels auctioned in 2002 would be less than their current value, however. We expect that most of the licenses auctioned in 2002 could not be used until the transition to DTV is completed sometime after 2007, causing companies to discount their bids to reflect the deferred income streams. Digital broadcasting also will permit more over-the-air channels to be offered in each market, which will decrease the price of new channels. Adjusting for these factors, we estimate that the auction of new channels in 2002 would average about \$4 million per channel.

Assuming the bill would preclude the auction of about 50 channels and using an average price of \$4 million per channel suggests that enacting H.R. 486 could reduce auction receipts by \$200 million in 2002. Because we assume that there is only a 50 percent chance that the FCC would auction these channels under current law, however, CBO estimates that implementing this bill would reduce offsetting receipts from the auction of new primary licenses in 2002 by about \$100 million. If the presence of Class A licensees resulted in a loss of offsetting receipts from the auction of a channel in a top market—an unlikely but possible event—the cost of this legislation would be significantly higher.

Enacting H.R. 486 also could result in a loss of receipts after 2002 if the auction held in 2002 does not include all of the spectrum that will be available at the end of the transition to DTV. The costs could be significant if, as assumed in this estimate, the FCC postpones auctioning channels in major markets until the congestion clears at the end of the transition. However, CBO does not expect the FCC to auction more broadcast channels until after 2007, which is the year the commission's general auction authority expires. Hence CBO estimates that this bill would not affect offsetting receipts over the 2003–2007 period.

Effect on Auctions of Licenses for Existing LPTV Stations

CBO estimates that offsetting receipts from the auction of LPTV stations would increase by about \$5 million in 2002 as a result of this bill. CBO expects that proceeds from auctions involving displaced LPTV stations could be higher if two or more of the applicants competing for a license were eligible for Class A status, because the value of a primary license would be greater than that of a secondary license. Based on information regarding stations await-

ing relocation, CBO assumes that only a small number of LPTV auctions would involve more than one Class A applicant and that the average proceeds from each auction would be small.

Pay-as-you-go considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Because H.R. 486 would affect direct spending, pay-as-you-go procedures would apply. The estimated impact on outlays is shown in the following table. For purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding 4 years are counted.

	By fiscal year, in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	0	0	95	0	0	0	0	0	0	0
Changes in receipts	Not applicable										

Intergovernmental and private-sector impact

H.R. 486 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no significant impact on the budgets of state, local or tribal governments. These governments may experience some minimal benefits to the extent that they own low-power television stations that would qualify for the Class A license to be established under the bill.

Estimate prepared by: Kathleen Gramp.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title of the bill, the “Community Broadcasters Protection Act of 1999.”

Section 2. Findings

Section 2 describes the Congress’ findings on the importance of low-power television service. The Congress finds that LPTV stations have operated in a manner beneficial to the public, and in many instances, provide worthwhile and diverse services to communities that lack access to over-the-air programming. The Congress also finds, however, that LPTV stations’ secondary regulatory status effectively blocks access to capital.

Section 3. Preservation of low-power community television broadcasting

Section 3 amends section 336 of the Communications Act of 1934³ to require the FCC to create a new “Class A” license for certain qualifying LPTV stations. New paragraph (1)(A) in particular directs the FCC to prescribe rules within 120 days of enactment for the establishment of a new Class A television license that will be available to qualifying LPTV stations. The FCC’s rules must ensure that a Class A licensee receives the same license terms and renewal standards as any full-service licensee, and that each Class A licensee is accorded primary regulatory status. Subparagraph (B) further requires the FCC, within 30 days of enactment, to send to each existing LPTV licensee a notice that describes the requirements for Class A designation. Within 60 days of enactment (or within 30 days of the FCC’s notice), LPTV stations intending to seek Class A designation must submit a certification of eligibility to the FCC. Absent a material deficiency in an LPTV station’s certification materials, the FCC is required under subparagraph (B) to grant a certification of eligibility.

Subparagraph (C) permits an LPTV station, within 30 days of the issuance of the rules required under subparagraph (A), to submit an application for Class A designation. The FCC must award a Class A license to a qualifying LPTV station within 30 days of receiving such application. Subparagraph (D) mandates that the FCC must act to preserve the signal contours of an LPTV station pending the final resolution of its application for a Class A license. In the event technical problems arise that require an engineering solution to a full-service station’s allotted parameters or channel assignment in the DTV table of allotments, subparagraph (D) requires the FCC to make the necessary modifications to ensure that such full-service station can replicate its service area, as provided for in the FCC’s rules.

Paragraph (2) lists the criteria an LPTV station must meet to qualify for a Class A license. Specifically, the LPTV station must: during the 90 days preceding the date of enactment, broadcast a minimum of 18 hours per day—including at least 3 hours per week of locally-originated programming—and also be in compliance with

³ 47 U.S.C. § 336.

the FCC's rules on low-power television service; and from and after the date of its application for a Class A license, be in compliance with the FCC's rules for full-service television stations. In the alternative, the FCC may qualify an LPTV station as a Class A licensee if it determines that such qualification would serve the public interest, convenience, and necessity or for other reasons determined by the FCC.

Paragraph (3) provides that no LPTV station authorized as of the date of enactment may be disqualified for a Class A license based on common ownership with any other medium of mass communication.

Paragraph (4) makes clear that the FCC is not required to issue Class A LPTV stations (or translators) an additional license for advanced television services. The FCC, however, must accept applications for such services, provided the station will not cause interference to any other broadcast facility applied for, protected, permitted or authorized on the date of the filing of the application for advanced television services. Either the new license for advanced services or the original license must be forfeited at the end of the DTV transition. The licensee may elect to convert to advanced television services on its analog channel, but is not required to convert to digital format until the end of the DTV transition.

Paragraph (5) clarifies that nothing in new subsection 336(f) preempts, or otherwise affects, section 337 of the Communications Act of 1934.⁴

Paragraph (6) precludes the FCC from granting Class A licenses to LPTV stations operating between 698 megahertz (MHz) and 806 MHz (i.e., television broadcast channels 52 through 69). However, the FCC shall provide to LPTV stations assigned to, and temporarily operating on, those channels the opportunity to qualify for a Class A license. If a qualifying LPTV station is ultimately assigned a channel within the band of frequencies that will eventually comprise the "core spectrum" (i.e., television broadcast channels 2 through 51), then the FCC is required to issue a Class A license simultaneously. However, the FCC may not grant a Class A license to an LPTV station operating on a channel within the core spectrum that the FCC will identify within 180 days of enactment.

Finally, paragraph (7) provides that the FCC may not grant a Class A license (or a modification thereto) unless the requesting LPTV station demonstrates that it will not interfere with one of three types of radio-based services. First, under subparagraph (A), the LPTV station must show that it will not interfere with: (i) the predicted Grade B contour of any station transmitting in analog format; or (ii) the digital television service areas provided in the DTV table of allotments, or the digital television areas explicitly protected (as opposed to those areas that may be permitted) in the Commission's digital television regulations, or the digital television service areas of stations subsequently granted by the FCC prior to the filing of a Class A application. Second, under subparagraph (B), the LPTV station must show that it will not interfere with any licensed, authorized or pending LPTV station or translator. And third, under subparagraph (C), the LPTV station must show that

⁴47 U.S.C. § 337.

it will not interfere with other services (e.g., land mobile services) that also operate on television broadcast channels 14 through 20.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 336 OF THE COMMUNICATIONS ACT OF 1934

SEC. 336. BROADCAST SPECTRUM FLEXIBILITY.

(a) * * *

* * * * *

(f) *PRESERVATION OF LOW-POWER COMMUNITY TELEVISION BROADCASTING.*—

(1) *CREATION OF CLASS A LICENSES.*—

(A) *RULEMAKING REQUIRED.*—*Within 120 days after the date of enactment of the Community Broadcasters Protection Act of 1999, the Commission shall prescribe regulations to establish a class A television license to be available to licensees of qualifying low-power television stations. Such regulations shall provide that—*

(i) *the license shall be subject to the same license terms and renewal standards as the licenses for full-power television stations except as provided in this subsection; and*

(ii) *each such class A licensee shall be accorded primary status as a television broadcaster as long as the station continues to meet the requirements for a qualifying low-power station in paragraph (2).*

(B) *NOTICE TO AND CERTIFICATION BY LICENSEES.*—*Within 30 days after the enactment of the Community Broadcasters Protection Act of 1999, the Commission shall send a notice to the licensees of all low-power television licenses that describes the requirements for class A designation. Within 60 days after such date of enactment, licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. Absent a material deficiency, the Commission shall grant certification of eligibility to apply for class A status.*

(C) *APPLICATION FOR AND AWARD OF LICENSES.*—*Consistent with the requirements set forth in paragraph (2)(A) of this subsection, a licensee may submit an application for class A designation under this paragraph within 30 days after final regulations are adopted pursuant to subparagraph (A) of this paragraph. Except as provided in paragraphs (6) and (7), the Commission shall, within 30 days after receipt of an application of a licensee of a qualifying low-power television station that is acceptable for filing, award such a class A television station license to such licensee.*

(D) *RESOLUTION OF TECHNICAL PROBLEMS.*—The Commission shall act to preserve the service area of each low-power television licensee pending the final resolution of the class A application of such licensee. If, after granting certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications, as necessary, to ensure replication of the full-power digital television applicant's service area, as provided for in section 73.622 of the Commission's regulations (47 C.F.R. 73.622).

(2) *QUALIFYING LOW-POWER TELEVISION STATIONS.*—For purposes of this subsection, a station is a qualifying low-power television station if—

(A)(i) during the 90 days preceding the date of enactment of the Community Broadcasters Protection Act of 1999—

(I) such station broadcast a minimum of 18 hours per day;

(II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and

(III) such station was in compliance with the Commission's requirements applicable to low-power television stations; and

(ii) from and after the date of its application for a class A license, the station is in compliance with the Commission's operating rules for full-power television stations; or

(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.

(3) *COMMON OWNERSHIP.*—No low-power television station authorized as of the date of enactment of the Community Broadcasters Protection Act of 1999 shall be disqualified for a class A license based on common ownership with any other medium of mass communication.

(4) *ISSUANCE OF LICENSES FOR ADVANCED TELEVISION SERVICES TO TELEVISION TRANSLATOR STATIONS AND QUALIFYING LOW-POWER TELEVISION STATIONS.*—The Commission is not required to issue any additional license for advanced television services to the licensee of a class A television station under this subsection, or to any licensee of any television translator station, but shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application. Such new license or the original license of the applicant shall be forfeited after the end of the digital tele-

vision service transition period, as determined by the Commission. A licensee of a low-power television station or television translator station may, at the option of licensee, elect to convert to the provision of advanced television services on its analog channel, but shall not be required to convert to digital operation until the end of such transition period.

(5) *NO PREEMPTION OF SECTION 337.*—Nothing in this subsection preempts or otherwise affects section 337 of this Act.

(6) *INTERIM QUALIFICATION.*—

(A) *STATIONS OPERATING WITHIN CERTAIN BANDWIDTH.*—The Commission may not grant a class A license to a low-power television station for operation between 698 and 806 megahertz, but the Commission shall provide to low-power television stations assigned to and temporarily operating in that bandwidth the opportunity to meet the qualification requirements for a class A license. If such a qualified applicant for a class A license is assigned a channel within the core spectrum (as such term is defined in MM Docket 87–286, February 17, 1998), the Commission shall issue a class A license simultaneously with the assignment of such channel.

(B) *CERTAIN CHANNELS OFF-LIMITS.*—The Commission may not grant under this subsection a class A license to a low-power television station operating on a channel within the core spectrum that includes any of the 175 additional channels referenced in paragraph 45 of its February 23, 1998, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order (MM Docket No. 87–268). Within 18 months after the date of enactment of the Community Broadcasters Protection Act of 1999, the Commission shall identify by channel, location, and applicable technical parameters those 175 channels.

(7) *NO INTERFERENCE REQUIREMENT.*—The Commission may not grant a class A license, nor approve a modification of a class A license, unless the applicant or licensee shows that the class A station for which the license or modification is sought will not cause—

(A) *interference within—*

(i) *the predicted Grade B contour (as of the date of enactment of the Community Broadcasters Protection Act of 1999, or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date) of any television station transmitting in analog format; or*

(ii) *(I) the digital television service areas provided in the DTV Table of Allotments, (II) the areas protected in the Commission's digital television regulations (47 C.F.R. 73.622(e) and (f)), or (III) the digital television service areas of stations subsequently granted by the Commission prior to the filing of a class A application;*

(B) *interference within the protected contour of any low-power television station or low-power television translator station that—*

(i) was licensed prior to the date on which the application for a class A license, or for the modification of such a license, was filed;

(ii) was authorized by construction permit prior to such date; or

(iii) had a pending application that was submitted prior to such date; or

(C) interference within the protected contour of 80 miles from the geographic center of the areas listed in section 22.625(b)(1) or 90.303 of the Commission's regulations (47 C.F.R. 22.625(b)(1) and 90.303) for frequencies in—

(i) the 470–512 megahertz band identified in section 22.621 or 90.303 of such regulations; or

(ii) the 482–488 megahertz band in New York.

[(f)] (g) EVALUATION.—Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include—

(1) * * *

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[(g)] (h) DEFINITIONS.—As used in this section:

(1) * * *

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