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VIA ELECTRONIC FILING

June 10, 2019

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Notice of Ex Parte Communications
Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Part 15 of the Commission's Rules to Eliminate the Analog Tuner Requirement
MB Dkt. No. 03-185; GN Docket No. 12-268; ET Docket No. 14-175

Dear Ms. Dortch:

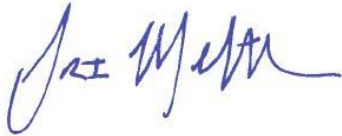
On June 6, 2019, Ari Meltzer and Joan Stewart of Wiley Rein LLP along with Paul Koplin and Laurence Rogow of Venture Technologies Group, Inc., Evan Fieldman of Weigel Broadcasting, Rene Heredia of Guadalupe Radio, Walter Torres and Wray Fitch of La Nueva/Signal Above, Vince Castelli of Prism TV, and Tom Wilson of WLFM-LP/Murray Hill Broadcasting, LLC participated in separate meetings with (1) Joel Miller of the Office of Commissioner O'Rielly; and (2) Barbara Kreisman, Albert Shuldiner, Holly Sauer, and Shaun Maher of the Media Bureau. On June 7, 2019, Ari Meltzer and Joan Stewart of Wiley Rein LLP along with Paul Koplin and Laurence Rogow of Venture Technologies Group, Inc., Evan Fieldman of Weigel Broadcasting, Rene Heredia of Guadalupe Radio, Walter Torres and Jeffrey LeSourd of La Nueva/Signal Above, and Vince Castelli of Prism TV participated in separate meetings with (1) Evan Swarztrauber of the Office of Commissioner Carr; (2) Alexander Sanjenis of the Office of Chairman Pai; and (3) Kate Black of the Office of Commissioner Rosenworcel.

The participants discussed the need to preserve the capability of LPTV stations operating on channel 6 to continue broadcasting an aural signal that can be received on frequency 87.7 FM following the LPTV digital transition.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, a copy of the presentation shared at each of the meetings is attached hereto as Exhibit A.

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Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Ari Meltzer". The signature is fluid and cursive, with the first name "Ari" being more prominent and the last name "Meltzer" following in a similar style.

Ari Meltzer

EXHIBIT A



Channel 6 and 87.7 FM

MAKING EFFICIENT USE OF LOW BAND VHF SPECTRUM IN THE PUBLIC INTEREST,
CONVENIENCE AND NECESSITY.

Channel 6 Overview

- ▶ Many channel 6 LPTV stations provide important audio services to supplement their video signals. Listeners can hear these services at 87.7 MHz on an FM radio.
- ▶ Millions of Americans tune to 87.7 FM to listen to programming not available anywhere else, particularly in ethnic and minority communities that are underserved.
- ▶ Once LPTV's transition to digital in June 2021, listeners will no longer be able to receive audio from Channel 6 stations on 87.7FM.
- ▶ Industry has developed a technical solution to protect these vital services, but the Commission's failure to address questions raised by its 2014 NPRM raises uncertainty about the future of these stations.

An Analog Audio Signal paired with Digital Channel 6 = Efficient Use of Spectrum

- ▶ Channel 6 LPTV licensees should be allowed to make the most efficient use of spectrum.
- ▶ An 87.7 MHz audio signal can co-exist on the same 6 MHz channel as a digital Channel 6 LPTV station without harming TV or FM reception.
- ▶ The continuation of audio broadcasts on 87.7 MHz is in the public interest.
- ▶ Digital LPTV stations are allowed to “supplement” their broadcasts with “audio signals” under the existing rules.
- ▶ A supplementary 87.7 MHz audio signal qualifies as an ancillary service, which entitles the government to 5% of its revenue.

History of Channel 6

- ▶ With the introduction of television in the 1920s, the US government made the decision to assign the frequency occupying Channel 6 (82-88 MHz) to television stations like WRGB-TV CBS Channel 6 in Albany-Schenectady New York – one of the first commercial stations in the US.
- ▶ Because of Channel 6's proximity to the FM band, its signal can also be heard on 87.7 FM.
- ▶ Although the FM Band does not officially begin until 88.1 MHz in the United States, it begins at 87.7 MHz in Europe.
- ▶ In order to produce radios for the worldwide market, most manufacturers of FM radios start the FM dial at 87.7 MHz.

Full Power Broadcasters Have Largely Abandoned Channel 6

- ▶ The Commission has acknowledged that “Use of the low-VHF channels 2-6 for digital service could be particularly difficult because of the generally higher levels of background noise on those channels ... Complaints from individuals typically have indicated that a consumer who was previously able to receive a station's analog VHF signal was not able to receive that station's digital VHF signal.”

[Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, Notice of Proposed Rulemaking, ET Docket No. 10-235, 25 FCC Rcd 16498, Para 43]

- ▶ In the Report and Order pertaining to “Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF” the Commission conceded that “the record in this proceeding does not provide us a clear direction with respect to significantly increasing the utility of the VHF bands for the operation of television services.”

[Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, Report and Order, ET Docket No. 10-235, 27 FCC Rcd 4616, 4621, ¶ 10 (2012)]

- ▶ There are only 10 full power TV broadcasters licensed to Channel 6.

Low-Power Television has Embraced Channel 6

- ▶ The aural carrier of an analog Channel 6 television broadcast can be received by most FM radios at 87.7 MHz.
- ▶ The multi-dimensional use of analog channel 6 has given a voice to diverse constituencies and ethnic groups unable to find a home anywhere else on the FM dial.
- ▶ More than a third of analog channel 6 LPTV stations on the air today provide programming specifically targeted to listeners on 87.7 FM as well as viewers on Channel 6.

28 Analog Channel 6 LPTV Stations Branded as 87.7 FM, Most Serving Ethnic Minorities

Alaska - Colorado

KNIK-LP - ANCHORAGE , AK
W06BH - PHENIX CITY, ETC., AL
KCIO-LP - VICTORVILLE, CA*
KZNO-LP - BIG BEAR LAKE, CA*
KBKF-LP - SAN JOSE, CA
KEFM-LP - SACRAMENTO, CA
KRPE-LP - SAN DIEGO, CA*
KXDP-LP - DENVER, CO


*** These stations broadcast a programming format specifically designed to serve ethnic minorities.**

Florida – New York

WHDY-LP - PANAMA CITY, FL*
WEYS-LP - MIAMI, FL*
WDDA-LP - DALTON, GA
WRME-LP - CHICAGO, IL
KXKW-LP - LAFAYETTE, LA*
WOWZ-LP - SALISBURY, MD
WJMF-LP - JACKSON, MS
KGHD-LP - LAS VEGAS, NV*
WXXW-LP - BINGHAMTON, NY*
WVOA-LP - WESTVALE, NY
WNYZ-LP - NEW YORK, NY

Ohio - Wyoming

WLFM-LP - CLEVELAND, OH*
WPGF-LP - MEMPHIS, TN
KBFW-LP - ARLINGTON, TX*
KBEX-LP - AMARILLO, TX*
K06QA - ODESSA, TX*
KFLZ-LP - SAN ANTONIO, TX*
KZFW-LP - DALLAS, TX*
WDCN-LP - FAIRFAX, VA*
WMTO-LP - NORFOLK, VA*



Using digital Channel 6 with analog audio is an Efficient Use of Bandwidth

- ▶ Analog channel 6 LPTV stations that target listeners on 87.7 FM operate in compliance with the LPTV rules.
- ▶ These stations broadcast a visual signal that provides in demand community programming, such as:
 - ▶ Weather maps and forecast information.
 - ▶ Traffic cameras, traffic “heat” maps, and drive time information.
 - ▶ Community event calendars and electronic bulletin board services.
 - ▶ TV listings, news tickers, stock market information, and sports scores.

The Commission has Created Uncertainty by not Issuing a Decision

- ▶ In 2014, the Media Bureau released an NPRM seeking comment on whether digital LPTV stations should be allowed to operate analog FM radio type services on an ancillary or supplementary basis.
[See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations, MB Docket No. 03-185, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) (Third Notice)]
- ▶ The record was near-unanimously in favor of allowing LPTV stations to operate an analog FM type service, with NPR voicing the only opposition. Numerous broadcasters and programmers shared how this innovative service was allowing them to reach niche and under-served markets.
- ▶ Commenters provided detailed studies showing that dual operation of a digital LPTV station with an aural analog carrier would not cause interference to adjacent radio stations.
- ▶ However, despite the robust record in favor of the proposal, the Media Bureau declined to issue a decision, stating it would decide "at a later date." [See Third Notice, 29 FCC Rcd at 12554-566, paras. 47-53, See also: Third Report and Order and Fourth Notice of Proposed Rulemaking, December 16, 2015, Ftn. 12]

Independent Aural and Visual Carriers are Allowed under the FCC's Rules

- ▶ The law is unambiguous. 47 CFR § 73.653 has been on the books since 1986 and it holds that:

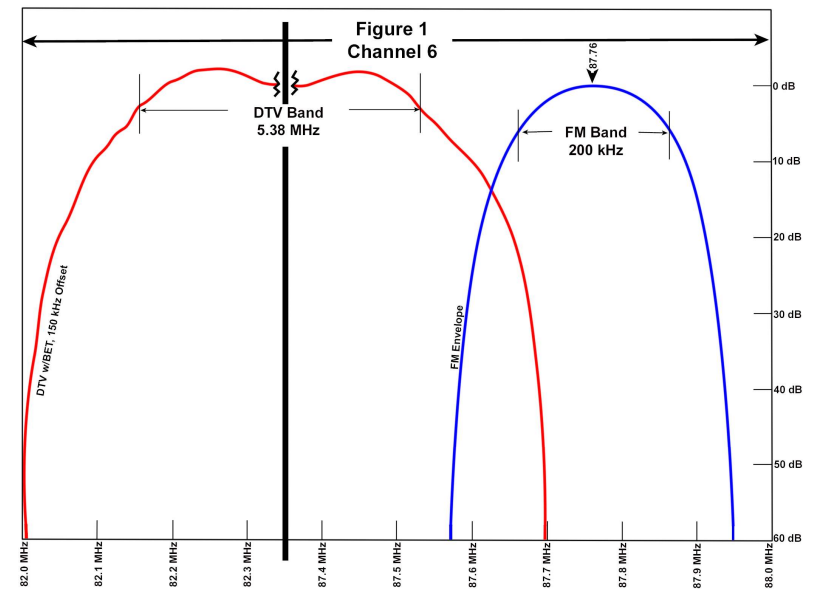
“The aural and visual transmitters [of a television station] may be operated independently of each other or, if operated simultaneously, may be used with different and unrelated program material.”

Channel 6 Audio does Not Interfere with FM Radio Stations

- ▶ 87.7 MHz is television spectrum, not radio spectrum. “87.7 FM” is a marketing strategy designed to let the public know that they can listen to Channel 6 TV broadcasts on their FM radio.
- ▶ Analog channel 6 audio has been broadcast on 87.7 MHz without causing interference to the FM radio band since the 1940s.
- ▶ No verifiable evidence has ever been produced showing that a channel 6 television station, operating within the lawful parameters of its license, causes harmful interference to an FM radio station.
- ▶ “Franken FM” is a pejorative term coined by radio stations to denigrate lawful broadcasts that compete with them for listeners.

87.7 FM Audio and Channel 6 DTV can Co-Exist in the same 6 MHz Channel

- ▶ A television station typically utilizes 5.38 MHz of its 6 MHz channel to broadcast a digital signal.
- ▶ The unused 0.62 MHz can be used to transmit a supplementary audio signal.
- ▶ By slightly narrowing the bandwidth used for the DTV broadcast on channel 6, it is possible to insert an FM audio carrier at 87.76 MHz without degrading the DTV signal or derogating the ability of ATSC tuners to receive it.



Testing has Proven that Digital and Analog Signals can share 6MHz

- ▶ Extensive Testing by Richard Bogner as well as testing performed by Linley Gumm and Charles Rhodes have shown that adding a supplementary audio signal to a channel 6 DTV broadcast will not derogate digital signal reception on the poorest tuners as long as the FM signal's ERP is at least 7 dB below the DTV ERP.
- ▶ ATSC tuners from 27 different manufacturers were tested in 2014.
- ▶ 21 of the 27 tuners tested by Bogner and 13 of the 18 tuners tested by G&R performed well with the DTV signal 4 dB below the FM audio signal. Only the poorest DTV receivers required a DTV signal 7 dB above the FM.
- ▶ In 2017, the inferior brands of receiver were retested by Bogner, and the newer models were all able to receive ATSC broadcasts with the FM audio signal 4 dB above the DTV signal.
- ▶ Testing also showed that even with the poorest FM receivers, the FM signal can be at least 10 dB below the DTV signal before any evidence of noise is heard.

Digital LPTV Stations can operate with Supplementary Audio Signals

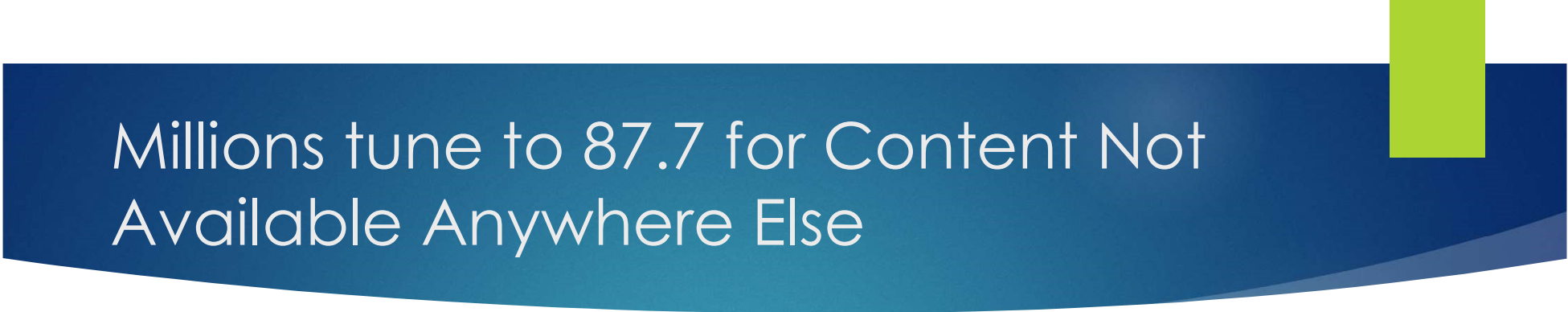
- ▶ The Communications Act explicitly authorizes digital LPTV stations to supplement their digital broadcast with “audio signals.” No additional legislation is required.
- ▶ 47 CFR 74.790(i) provides that “a digital LPTV station may offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis in accordance with the provisions of § 73.624(c)” which holds that “DTV broadcast stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, **audio signals**, subscription video, and any other services that do not derogate DTV broadcast stations' obligations under paragraph (b) of this section.”

Digital LPTV Must be “Satisfactorily Viewed” on Consumer Equipment

- ▶ Digital LPTV stations are required to produce digital television signals that can be “satisfactorily viewed” on consumer receiving equipment. They are not required to use 8VSB transmission throughout the entire 6 MHz bandwidth of a television channel.
- ▶ 47 CFR Section 74.795(b) states: “The following requirements must be met before digital low power TV and TV translator transmitter will be certificated by the FCC: (1) The transmitter shall be designed to produce digital television signals that can be satisfactorily viewed on consumer receiving equipment **based on** the digital broadcast television transmission standard in § 73.682(d) of this chapter;”
- ▶ § 73.682(d) is the ATSC television standard, however in FCC 04-220, MB Docket No. 03-185, *Report & Order in the matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, the Commission established in paragraph 163 that “under Part 74 of the rules, **LPTV and TV translator stations are not required to comply with either Section 73.682(a) or (d).**”

The Continued Existence of a Channel 6 Audio Signal on 87.7 FM is in the Public Interest

- ▶ The LPTV digital transition does not have to deprive listeners/viewers of a service that they enjoy and rely upon.
- ▶ Allowing broadcasters to provide a digital television signal and a supplementary FM audio service on the same 6 MHz television channel is an efficient use of spectrum and serves the public interest.
- ▶ A supplementary 87.7 MHz audio signal would be an ancillary service and the Government would be entitled to 5% of gross revenues. This puts money in the U.S. Treasury.



Millions tune to 87.7 for Content Not Available Anywhere Else

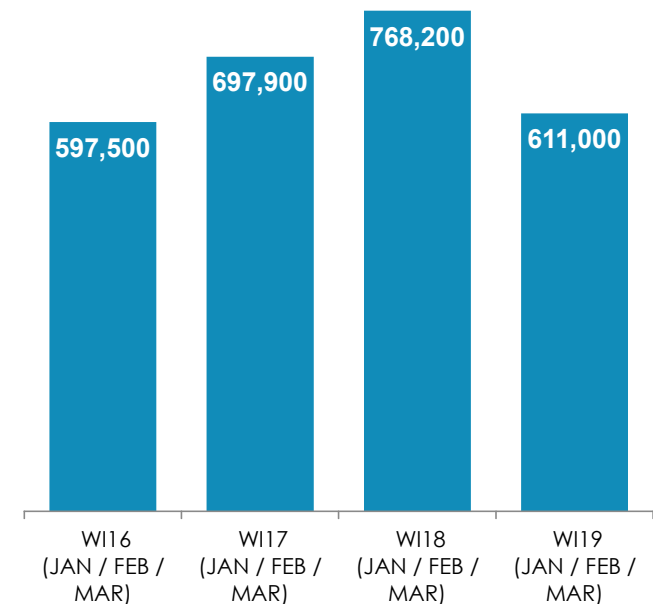
- ▶ According to Arbitron, more than 2 million listeners tune in to 87.7 FM every week.
- ▶ 87.7 FM serves diverse ethnic communities and the general public with niche programming not available on other stations.
- ▶ Spanish language religious programming is broadcast by 87.7 in Los Angeles.
- ▶ Jazz is broadcast by 87.7 in Alaska.
- ▶ Locally produced content is broadcast by 87.7 in Jackson, Mississippi.
- ▶ Spanish language sports is broadcast by 87.7 in Denver.
- ▶ Multiethnic programming in Syracuse including: Bosnian, Polish, and Spanish.
- ▶ According to Nielsen, approximately 95% of Hispanics listen radio in an average week, which is higher than other ethnic groups. 87.7 FM is a key source of information and entertainment for Hispanic listeners in several markets.



87.7 FM is a Ratings Leader in Chicago

- ▶ WRME-LP's P6+ Average Weekly Cume is 665,900 (Apr '19).
- ▶ In Jan/Feb/Mar '19, WRME tied WKQX-FM for #17 with a 2.7 share, beating WBBM-FM, WLS-AM, WEBG-FM and WFMT-FM.
- ▶ In Weekly Time Spent Listening (TSL), WRME ranked #13 with a TSL of 3 hours.
- ▶ In Jan/Feb/Mar 2019 45,700 P6+ listened exclusively to WRME.
- ▶ WRME delivered it's highest Weekly Cume-to-date in Mar '18 with 829,900 P6+

**Mon-Sun/6am-12midnight
P6+ Average Weekly Cume**



Source: Nielsen Audio – Chicago Metro; as dated

87.7 FM is Award Winning Radio Illinois Broadcasters Assn. Awards



Finalists for 2019

Winners to be announced 6/13/19

Best Radio Station Community Service

Entry: Save the Music

Best Radio PSA

Entry: Chicago Fire Department

Best Radio Non-Humorous Commercial

Entry: American Science and Surplus

Best Radio Light Feature

Entry: The Stories Behind the Songs

Best Radio Self-promotion

Entry: Music for Labor Day Weekend

Winners 2018

Best Radio Commercial

Entry: Red Hots

Best Radio Series

Entry: Dan Fogelberg

Best Radio Self-promotion

Entry: Do-Re-Me

Winners 2017

Best Radio Humorous Commercial

Entry: Al Gelato Chicago



Chairman Pai and Spanish Speaking Sports Fans all over Cleveland think 87.7 FM is “Fantastic”



- ▶ WLFM-LP channel 6 (branded La Mega 87.7) is the Spanish language home of the Cleveland Browns and the Cleveland Cavaliers.
- ▶ Chairman Pai was so impressed by Rafa El Alcalde's call during a Cleveland Browns game broadcast by WLFM-LP that he tweeted about how “fantastic” it was.

<https://twitter.com/AjitPaiFCC/status/1062189964195233794>



Guadalupe Radio 87.7 FM Los Angeles & San Diego



- ▶ Guadalupe Radio educates, informs and transforms society through faith-based Christian broadcasting in Southern California.
- ▶ Guadalupe Radio has served a disenfranchised Hispanic audience since 1995.
- ▶ Guadalupe Radio's Facebook page has more than 3.8 million followers.
- ▶ Every year more than 70,000 listeners attend one of Guadalupe Radio's congresses to promote human values in the greater Los Angeles area.
- ▶ Another 10,000 listeners attend the Passion of Christ play performed by hundreds of local volunteers who learn acting and promote human values through artistic expression.

La Nueva 87.7 – WDCN Is an Important Part of the Community

- ▶ La Nueva –WDCN is the second largest Hispanic radio station in the D.C., Maryland, Virginia area, averaging over 100,000 weekly listeners.
- ▶ Live telecasts from El Salvador have averaged about 1 million “hits” over the past 3 years.
- ▶ WDCN has more than 225,000 followers on Facebook and over 16,000 on Instagram.
- ▶ WDCN Partners with large and local venues to bring festivals and concerts to the community. Festivals include: Festival Catracho, Chapin, Salvadorenisimo, & Latino of Baltimore. Concerts include Marc Anthony, JLO, Maroon Five, J Balvin, Guns N’ Roses.



La Nueva 87.7 – WDCN Gives Back to the Community

- ▶ Two 24 hr. radiothons broadcast by WDCN raised almost \$500,000 for St. Jude's Children's Hospital.
- ▶ A 6 hour Nueva Vida radiothon raised approximately \$10,000 for women with cancer.
- ▶ When an apartment fire in Silver Spring, MD displaced Hispanic families, WDCN's 6 Hour radiothon raised \$7,000 for two families whose children had perished in the fire.
- ▶ WDCN raised \$16,000 to buy Christmas presents for children from low-income families.



KXDP La Invasora – Denver, CO

- ▶ KXDP broadcasts local community-oriented programming all day. It is the only station in Denver that broadcasts live news, traffic, and weather reports in Spanish.
- ▶ KXDP is more than a radio station, it is a vital resource for the Hispanic community in Denver. Listeners can call the station for general information. KXDP is the "yellow pages" for people who are not familiar with social media or the internet, especially the elderly.
- ▶ Every Christmas, Día del Niño and Thanksgiving KXDP identifies and helps local families in need.
- ▶ KXDP gives free air time to Alcoholics Anonymous, church events, health fairs, and fundraisers for nonprofit organizations that other media outlets ignore.



The Time Is Now

- ▶ The Commission can act on the existing record by issuing a further Report and Order.
- ▶ It is time for the Commission to confirm that its rules allow digital LPTV broadcasters to operate analog FM radio-type services on an ancillary or supplementary basis.
- ▶ The Commission must act quickly or else this vital service will be lost once Channel 6 stations end analog operations.