



PUBLIC NOTICE

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MEDIA BUREAU SEEKS TO UPDATE THE RECORD ON THE OPERATION OF ANALOG RADIO SERVICES BY DIGITAL LPTV STATIONS AS ANCILLARY OR SUPPLEMENTARY SERVICES

MB Docket No. 03-185

Comment Date: [30 days after publication in the Federal Register]
Reply Comment Date: [45 days after publication in the Federal Register]

1. In this Public Notice, the Media Bureau seeks to update the record in MB Docket No. 03-185 on the operation of analog radio services by digital low power television stations (LPTV) as ancillary or supplementary services under section 74.790(i) of the Commission's rules.¹ Due to the impending deadline for elimination of the analog LPTV service, and recent developments in the record,² we seek to refresh the record in this proceeding.

2. Historically, some analog LPTV stations licensed on channel 6 have operated with very limited visual programming and an audio signal that is programmed like a radio station.³ FM radio listeners are able to receive the audio portion of these LPTV stations at 87.76 MHz, which is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). When these LPTV stations convert to digital, however, they will be unable to continue providing such radio service because the digital audio portion of their signal can no longer be received by standard FM receivers.⁴

¹ See 47 CFR §§ 74.790(i), 73.624(c) and (g); *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) (*NPRM*).

² See, e.g., Venture Technologies Group, Inc., et al. (Channel 6 Commenters), "Notice of Communications," MB Docket No. 03-185, filed June 10, 2019 (Channel 6 Commenters Ex Parte); Preserve Community Programming Coalition, "Informal Comments," MB Docket No. 03-185, filed July 3, 2019 (PCPC Informal Comments); and California State University Long Beach Research Foundation, "Ex Parte Communication," MB Docket No. 03-185, filed July 30, 2019 (Cal State Ex Parte).

³ See *NPRM*, 29 FCC Rcd at 12554, para. 47.

⁴ All LPTV and TV translator stations must terminate all analog operations by 11:59 p.m. local time on July 13, 2021. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015) (*LPTV DTV R&O*). In that decision, the Commission extended the LPTV digital transition date until 12 months following the completion of the 39-month post-incentive auction transition period (or 51 months from the completion of the incentive auction and the release

3. As part of the transition from analog to digital operations, the Commission sought comment in a 2014 *NPRM* on whether to allow LPTV stations on digital television channel 6 to continue to operate these analog FM radio-type services on an ancillary or supplementary basis.⁵ Specifically, the Commission sought comment on whether to permit LPTV stations on digital television channel 6 to operate dual digital and analog transmission systems.⁶ The Commission sought to determine whether a digital LPTV station can provide an analog FM radio-type service as an ancillary or supplementary service consistent with the Communications Act of 1934, as amended, and the rules.⁷ The Commission also sought comment on the potential for a digital LPTV station's analog FM radio-type service to interfere with or disrupt the LPTV station's digital TV service and/or interfere with primary licensees.⁸ Finally, the Commission asked whether such operations should be subject to the Part 73 rules applicable to FM radio stations and whether the analog FM radio-type service should be subject to the five percent fee imposed on revenues generated by ancillary or supplementary services.⁹ In a 2015 *Report and Order*, the Commission declined to decide this issue, and instead noted that it would make a determination at a later date.¹⁰

4. Given the upcoming deadline for LPTV to transition to digital, we find it appropriate to refresh the record in this docket. Several parties have also recently raised some additional issues on which we seek comment. For example, the Channel 6 Commenters maintains that LPTV licensees should be allowed to make "the most efficient use of spectrum" by providing analog FM radio-type service on an ancillary or supplementary basis.¹¹ PCPC agrees and recommends that the Commission modify its rules to allow those LPTV stations currently licensed and operating in analog on channel 6 to continue transmitting an analog audio carrier when they transition to digital operations on channel 6.¹² Both commenters claim that the provision of independent aural and visual carriers are allowed under the rules and we seek comment on whether that is an accurate reading of the Commission's technical rules.¹³

5. In addition, Channel 6 Commenters and PCPC maintain that digital LPTV stations can operate with supplementary audio signals pursuant to the existing ancillary or supplementary services

of the *Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release date of the *Closing and Channel Reassignment Public Notice*, the new LPTV digital transition date is now July 13, 2021.

⁵ *NPRM*, 29 FCC Rcd at 12554-56, paras. 47-53.

⁶ *Id.* at 12554, para. 49.

⁷ *Id.* at 12554-5, para. 49.

⁸ *Id.* at 12555, paras. 50-51.

⁹ *Id.* at 12555-6, paras. 52-53.

¹⁰ See *LPTV DTV R&O*, 30 FCC Rcd at 14930, n.12 ("We intend to issue a decision on whether to permit digital LPTV stations to operate analog FM radio type services on an ancillary or supplementary basis at a later date.").

¹¹ Channel 6 Commenters Ex Parte at 8.

¹² PCPC Informal Comments at 4.

¹³ See Channel 6 Commenters Ex Parte at 13 and PCPC Informal Comments at 4 and 6 *citing* 47 CFR § 73.653 (Operation of TV aural and visual transmitters), 47 CFR § 73.682(d) (TV transmission standards) and 47 CFR § 74.795(b) (Digital low power TV and TV translator transmission system facilities);

rules.¹⁴ We seek comment on these matters. Specifically, we seek comment on whether analog channel 6 LPTV stations currently operating an analog FM-radio type service should be permitted to continue to provide such service on an ancillary or supplementary basis after they transition to digital. Further, we seek comment on whether, and how, we could legally limit the number of stations eligible to offer such a service. Should we determine to limit eligibility, we seek comment on the basis for such a limitation. Should eligibility be limited to only those analog channel 6 LPTV stations “currently operating” an analog FM radio-type service? How should we define the term “currently operating?” Should “currently operating” be defined as an analog channel 6 LPTV station providing an analog FM radio-type service as of the release date of this Public Notice? We seek comment on this proposal, other cut-off dates, or alternate ways to limit eligibility.

6. Channel 6 Commenters and PCPC also maintain that analog radio signals “can co-exist on the same 6 MHz channel as a digital [c]hannel 6 LPTV station without harming TV or FM reception.”¹⁵ Channel 6 Commenters argues that “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.”¹⁶ PCPC recommends revising the rules so that, “if the operation of the LPTV station causes any actual interference to the transmission of any authorized FM broadcast station, the LPTV station should be required to eliminate the interference or immediately suspend operations.”¹⁷ Cal State disagrees and maintains that the Commission’s current rules ignore the potential for interference between LPTV channel 6 analog audio operations and FM radio stations which Cal State describes as “particularly objectionable since LPTV are left free to propose facilities that are predicted to cause interference to primary service FM radio stations, even though LPTV is a secondary service.”¹⁸ Cal State asks that the Commission obtain “much more detailed information” on this issue and adopt rules to protect other stations from interference.¹⁹ We seek comment on the question of whether analog FM-radio type services operated by digital LPTV channel 6 stations will cause impermissible interference to other services. We request the submission of any more recent technical studies demonstrating the feasibility of transmitting analog audio signals within a digital television station’s spectrum.

7. The Commission rules require FM stations proposing operations on FM reserved band channels 201 through 220 to protect television stations operating on TV channel 6.²⁰ Commenters should note that the Commission in July 2019 adopted an Notice of Proposed Rulemaking proposing elimination of these protections entirely as of July 13, 2021 (the deadline for the digital LPTV transition) and adoption of a waiver process in the interim.²¹ The Commission acknowledged those analog LPTV

¹⁴ Channel 6 Commenters Ex Parte at 17 *citing* 47 CFR 74.790(i); PCPC Informal Comments at 6-7.

¹⁵ Channel 6 Commenters Ex Parte at 15; *see also* PCPC Informal Comments at 8-9.

¹⁶ Channel 6 Commenters Ex Parte at 15.

¹⁷ PCPC Informal Comments at 9.

¹⁸ Cal State Ex Parte at 2.

¹⁹ *Id.* at 1-2.

²⁰ *See* 47 CFR §§ 73.525; 73.825; 74.1205.

²¹ *See Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules*, Notice of Proposed Rulemaking, MB Docket No. 34 FCC Rcd 6537 (2019) (*LPFM NPRM*).

channel 6 television stations providing FM radio type services and specifically sought comment on whether the proposed elimination of channel 6 television protection by FM radio stations would be compatible with LPTV audio operations on 87.7 MHz if such operations were allowed to continue.²²

8. Finally, given the passage of time since the *NPRM* was adopted, we seek comment on the remaining issues raised in the *NPRM*. For example, as required by Section 336(b)(1) of the Act, is use of digital LPTV channel 6 for an analog service “consistent with the technology or method designated by the Commission for the provision of advanced television services”?²³ We seek comment on how an ancillary or supplementary analog service is “consistent with” digital technology. If the Commission decides to permit analog FM radio-type operations by digital LPTV stations on an ancillary or supplementary basis, we seek comment on whether such operations should be subject to the Part 73 rules applicable to FM radio stations.²⁴ Should channel 6 digital LPTV stations authorized to provide analog FM radio-type operations be prohibited from transferring such authorization and should the right to continue the analog operation terminate with an assignment or transfer?

9. In addition, we seek further comment on whether the provision of an analog FM radio-type service on an ancillary or supplementary basis should be subject to a five percent fee on revenues generated by such service.²⁵ Channel 6 Commenters maintains that “a supplementary 87.7 MHz audio signal qualifies as an ancillary service, which entitles the government to 5% of its revenue.”²⁶

10. *Initial Regulatory Flexibility Act Analysis.* The *NPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission’s proposals.²⁷ We invite parties to file comments on the IRFA in light of this request to refresh the record.

11. *Ex Parte Rules - Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the

²² *Id.* at para. 13.

²³ *NPRM*, 29 FCC Rcd at 12554-5, para. 49. See 47 U.S.C. § 336(b)(1) (requiring the Commission to adopt regulations that allow the holders of digital television licenses to offer ancillary or supplementary services, but providing that such regulations shall “only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services”); 47 U.S.C. § 336(i)(1) (defining “advanced television services” as “television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled ‘Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service’, MM Docket 87-268, adopted September 17, 1992, and successor proceedings.”).

²⁴ See *NPRM*, 29 FCC Rcd at 12555-6, para. 52.

²⁵ *Id.* at 12556, para. 53.

²⁶ Channel 6 Commenters Ex Parte at 6 and 19.

²⁷ *NPRM*, 29 FCC Rcd at 12565-71.

²⁸ 47 CFR §§ 1.1200 *et seq.*

Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

12. *Filing Comments and Replies.* **All filings must be submitted in MB Docket No. 03-185.** Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

13. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

14. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call

the FCC's Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

15. *Additional Information.* For additional information on this proceeding, please contact Shaun Maher of the Media Bureau, Video Division, Shaun.Maher@fcc.gov, (202) 418-2324.