

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
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
	)	
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268
	)	
	)	
Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement	)	ET Docket No. 14-175
	)	
	)	

**COMMENTS OF VENTURE TECHNOLOGIES GROUP, LLC**

Venture Technologies Group, LLC (“VTG”) the licensee of numerous Class A, low power television (“LPTV”), and TV translator stations, hereby submits comments in response to the above-captioned Notice of Proposed Rulemaking (“NPRM”).<sup>1</sup> VTG agrees that LPTV and TV translator stations “are a source of diverse and local programming for viewers,”<sup>2</sup> and it appreciates the opportunity to focus on an area of utmost importance to VTG. Specifically, the Commission should allow LPTV stations on digital TV channel 6 to operate analog FM radio services on an ancillary or supplementary basis pursuant to Section 73.624(c) of the Commission’s rules. Analog Channel 6 stations have provided radio programming at 87.7 MHz

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<sup>1</sup> *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Notice of Proposed Rulemaking, FCC 14-151 (rel. Oct. 10, 2014) (“NPRM”).

<sup>2</sup> *Id.*, ¶ 1.

for decades, serving underserved audiences with unique, free, otherwise-unavailable programming. Now, as the NPRM recognizes, VTG has submitted an application to use “a single transmitter that allows a digital visual and audio stream, as well as a separate analog audio transmission, to simultaneously operate a digital LPTV station on channel 6 and an analog FM radio-type service at 87.76 MHz.”<sup>3</sup> Such innovative, free, over-the-air FM radio services such as the one proposed by VTG will produce clear public interest benefits and encourage efficient spectrum use without any countervailing harm.

In addition, VTG supports the Commission’s proposal to postpone indefinitely the LPTV digital transition deadline until after the completion of the incentive auction.

**I. ENGINEERING ANALYSIS AFFIRMATIVELY DEMONSTRATES THAT DIGITAL LPTV CAN OPERATE AN ANALOG TRANSMITTER WITHOUT INTERFERING OR DEROGATING ITS CO-CHANNEL DIGITAL OPERATION.**

The NPRM asks whether a “digital LPTV station [would] be able to operate an analog transmitter without interfering or derogating its co-channel digital operation.”<sup>4</sup> As described in the Application to provide a supplementary FM radio service along with digital LPTV service on KFMP-LP (Lubbock, Texas), the provision of the FM radio service will not compromise any part of the ATSC signal.<sup>5</sup> Indeed, the ATSC signal will operate with full integrity. Digital television operations utilize 5.38 MHz of the 6.00 MHz channel assigned to a station. The proposal for the FM radio service uses the currently unused 0.62 MHz bandwidth of the channel for a supplementary audio signal operating at 5.76 MHz of the bandwidth of the channel on digital channel 6 (87.76 MHz). The KFMP-LP application proposes to use Axcera’s Bandwidth

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<sup>3</sup> NPRM, ¶ 48; Application of Venture Technologies Group, LLC, licensee of KFMP-LP, channel 6, Lubbock, Texas, File No. BMPDVL-20140226AFU (the “Application”).

<sup>4</sup> NPRM, ¶ 50

<sup>5</sup> See Application, Ex. 11, at 2.

Enhancement Technology, which narrows the portion of the channel used for the over-the-air television ATSC service sufficiently to allow the ATSC digital television service to operate simultaneously with a supplementary audio signal.

VTG has submitted extensive testing of its proposed system, and the results demonstrate that the simultaneous operation of the channel 6 ATSC service and the supplementary 87.76 MHz audio signal does not derogate the ability of any current ATSC television receivers to decode the digital television signal, provided that the Effective Radiated Power (“ERP”) of the audio is no greater than the ERP of the digital signal.<sup>6</sup> Thus, to ensure that the ability of viewers receive an over-the-air video service is not compromised, and in compliance with the Commission’s rules governing maximum ERP, VTG proposed that its KFMP-LP facility operate with a digital ERP of 1.5 kilowatts and a FM carrier ERP of 1.5 kilowatts, for a total of 3.0 kilowatts.

**II. THE PUBLIC INTEREST SUPPORTS ALLOWING LPTV STATIONS ON DIGITAL TELEVISION CHANNEL 6 TO OPERATE ANALOG FM RADIO-TYPE SERVICES ON AN ANCILLARY OR SUPPLEMENTARY BASIS PURSUANT TO SECTION 73.624(C) OF THE FCC’S RULES.**

The Commission has long supported innovative, consumer-friendly, over-the-air broadcast services, and the dual digital LPTV/analog FM radio service is the highest and best use of the channel 6 spectrum. As the Commission stated in the *1997 DTV Order*, “There is no public interest harm in permitting ancillary and supplementary services; indeed, to the contrary, allowing such services contributes to efficient spectrum use and can expand and enhance use of existing spectrum.”<sup>7</sup>

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<sup>6</sup> See *id.*, at 3.

<sup>7</sup> *Advanced Television Sys. & Their Impact Upon the Existing Television Broad. Serv.*, 12 FCC Rcd 12809, ¶ 32 (1997) (“1997 DTV Order”).

Indeed, for almost 30 years, many channel 6 broadcasters have made efficient use of their spectrum by providing innovative FM services to new audiences. In the 1980s, channel 6 licensees discovered that because of channel 6's proximity to the FM band, their audience could simultaneously view content on channel 6 and listen to station audio at 87.7 on their FM dial. Dozens of these stations sprouted across the country. By 2009, Arbitron (since acquired by Nielsen) began to monitor 87.7 FM listenership, and current reports demonstrate that millions tune in to these stations. Importantly, the service also squarely fits within FCC Rule 73.653, which states that "aural and visual transmitters may be operated independently of each other or, if operated simultaneously, may be used with different an unrelated program material."<sup>8</sup>

The channel 6 stations owned and operated by VTG provide underserved ethnic communities and minority groups with invaluable programming. For example, in Los Angeles, a local Spanish Catholic church wanted to create a family-oriented news and entertainment station for the market, but it could not afford to lease programming time on other FM stations. Thanks to channel 6 FM broadcasts on 87.7 MHz, *Hombre Nuevo* has broadcast for more than 25 years and provided Spanish-language families with irreplaceable news, music, and self-help programming. In fact, three times per year, the station's listeners fill the Los Angeles Memorial Sports Arena and Los Angeles Convention Center for family conferences. As another example, when Texas Tech University pulled the plug on its student-run alternative music station, the station found a new home through KFMP-LP. For the holidays, the station switches full time to broadcast commercial-free, country holiday music.

Importantly, Section 74.790(i) of the Commission's Rules plainly allows for digital LPTV stations to offer "services of any nature, consistent with the public interest, convenience,

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<sup>8</sup> 47 C.F.R. § 73.653.

and necessity, on an ancillary or supplementary basis” consistent with Rule 73.624(c).<sup>9</sup> In turn, Rule 73.624(c) states that “[t]he 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 [Rule 73.624(b)].”<sup>10</sup> Here, the proposed FM radio service qualifies as an “audio signal” or, alternatively, as a service that does “not derogate DTV broadcast stations’ obligations under [73.624(b)].”

The radio service is also “consistent with the technology or method designated by the Commission for the provision of advanced television services.”<sup>11</sup> Notably, digital LPTV stations will continue to transmit an over-the-air video program signal when offering the FM radio service. As described above, the FM radio service will not derogate co-channel digital operation. In the *1997 DTV Order*, the Commission stated that “giving broadcasters flexibility to offer whatever ancillary and supplementary services they choose . . . should encourage entrepreneurship and innovation.”<sup>12</sup>

### **III. VENTURE TECHNOLOGIES SUPPORTS THE NPRM’S INTERFERENCE PROPOSALS.**

VTG supports the NPRM’s proposal that if the operation of the LPTV station causes any actual interference to the transmission of any authorized FM broadcast station, the LPTV station would be required to eliminate the interference or immediately suspend its operations.<sup>13</sup>

However, the NPRM’s proposed prohibition on “overlap between the 100 dBu interfering

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<sup>9</sup> 47 C.F.R. § 74.790(i).

<sup>10</sup> 47 C.F.R. § 73.624(c).

<sup>11</sup> See 47 U.S.C. § 336(b)(1).

<sup>12</sup> *1997 DTV Order*, ¶ 33.

<sup>13</sup> See NPRM, ¶ 51.

contour of the channel 6 LPTV station and the 60 dBu protected contour of [an] NCE FM station” is unnecessary.<sup>14</sup> Channel 6 television stations have operated an aural carrier at 87.7 MHz for decades without causing interference to NCE FM stations, and VTG does not anticipate interference to arise from their operation in the future. For instance, in the Application for KFMP-LP, VTG stated that “[b]ecause this existing CP for the station is for 3.0 kW ERP omnidirectional, there is already a showing that a total ERP of 3.0 kW -- 1.5 kW plus 1.5 kW -- will not cause any interference.”<sup>15</sup> In addition, as explained in the application, the proposed modification fully complies with the published DTV into DTV D/U ratios.

#### **IV. THE FCC SHOULD APPLY TAKE A PRACTICAL VIEW OF APPLICATION OF THE PART 73 RULES.**

The NPRM asks whether the FM radio service is analogous to other ancillary or supplementary services subject to regulation by the Commission.<sup>16</sup> VTG submits that the FM radio service is akin to FM radio multicasting, whereby FM radio stations broadcast multiple programming streams.<sup>17</sup> With FM radio multicasting, stations “air additional streams of traditional radio programming (*e.g.*, music, news, and sports), public safety services (*e.g.*, national security announcements), assisted living services (*e.g.*, radio reading services), non-English language programming, and news services to underserved populations.”<sup>18</sup> Likewise, here a digital LPTV station will air additional streams of radio programming with the same public interest goals of fostering diverse programming and providing programming to underserved populations.

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<sup>14</sup> *Id.*

<sup>15</sup> Application, Ex. 11, at 4; *see also* Application, Ex. 11, Figure 2 (showing the proposed contours).

<sup>16</sup> NPRM, ¶ 52 (citing 47 U.S.C. § 336(b)(3)).

<sup>17</sup> *See generally* *Digital Audio Broadcasting Systems*, 22 FCC Rcd 10344, ¶¶ 33-36 (2007).

<sup>18</sup> *Id.*, ¶ 36.

The NPRM also asks “which of the Part 73 rules should apply to the offering of an analog FM radio-type service.”<sup>19</sup> Just as the FCC did when authorizing FM radio multicasting, the agency should make a practical, public-interest judgment of the regulations that should apply to the FM radio service. For instance, the Commission “permit[ted] radio stations to provide multiple audio streams of digital programming without the need for individual station approval by the Commission.”<sup>20</sup> In like manner, the FCC should abstain from foisting rules such as requiring the FM radio service to “file an application for a construction permit and license to operate” and that the “channels be allotted through rulemaking.”<sup>21</sup> LPTV stations are already licensed to operate by the FCC. Requiring separate authorizations and allotments would not only place inequitable burdens on the FM radio service that are not placed on analogous FM radio multicasting stations, it would deter LPTV stations from pursuing the beneficial FM radio-type service. In addition, as the FM radio-type service will be located 87.76 MHz, applying a rule requiring stations to be located at “88.1 MHz through 107.9 MHz” does not make practical sense.<sup>22</sup>

By extension, VTG agrees that the public interest obligations of Part 73 that apply to FM radio multicast streams should apply to the FM radio-type service. In the *Digital Audio Broadcasting Systems Second Report and Order*, the FCC specified that these requirements were:

- political broadcasting;
- payment disclosure;
- prohibited contest practices;
- sponsorship identification;

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<sup>19</sup> NPRM, ¶ 52.

<sup>20</sup> *Digital Audio Broadcasting Systems*, ¶ 37.

<sup>21</sup> NPRM, ¶ 52.

<sup>22</sup> *See id.*

- cigarette advertising;
- broadcast of taped or recorded material;
- station log and public file requirements;
- station identification announcements; and
- emergency alert system requirements.<sup>23</sup>

In addition to these requirements, VTG agrees that the FM radio service should maintain a main studio.<sup>24</sup>

**V. ONLY SERVICES MEETING THE DEFINITION OF “FEEABLE” SHOULD BE SUBJECT TO A FIVE PERCENT FEE.**

The NPRM asks whether the FM radio-type service should “be subject to a five percent fee.”<sup>25</sup> The Commission should apply the five percent fee to the FM radio-type service only if it meets the statutory definition of a feeable ancillary or supplementary service. VTG agrees with the Commission that the current FM radio-type service has been “available to the general public without subscription.”<sup>26</sup>

**VI. THE COMMISSION SHOULD POSTPONE THE SEPTEMBER 1, 2015 LPTV TRANSITION DATE AND SHOULD NOT SET A NEW DEADLINE UNTIL AFTER COMPLETION OF THE INCENTIVE AUCTION.**

With uncertainty and delays surrounding the timeline for the incentive auction, the Commission correctly concludes in the NPRM that the September 1, 2015 LPTV digital transition deadline should be postponed.<sup>27</sup> VTG agrees that the September 1, 2015 deadline could “occur in close conjunction with the incentive auction” and leave “LPTV and TV translator stations little or no time to consider” the auction’s impact. Postponing the deadline correctly recognizes that forcing LPTV stations to expend resources on a digital transition when

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<sup>23</sup> *Digital Audio Broadcasting Systems*, ¶¶ 65-66, 73, 78.

<sup>24</sup> *See* NPRM, ¶ 52.

<sup>25</sup> *Id.*, ¶ 53

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, ¶ 5

many of them will not survive the repacking process would be extremely wasteful and short-sighted.

The NPRM also seeks comment “on whether to establish a new deadline now or wait until after the incentive auction.”<sup>28</sup> VTG agrees that it is “advantage[ous]” to allow the FCC to “examine the outcome of the incentive auction and take into account the overall impact of the repacking process on LPTV and TV translator stations before settling on a new transition date.” The full-power television digital conversion made clear that inherent delays make accurately predicting the completion of a historic undertaking impossible.<sup>29</sup> The NPRM and recent events demonstrate that estimating when the incentive auction will be completed is no easy task. In 2013, the Commission anticipated the auction and repacking process to occur in 2014.<sup>30</sup> In the NPRM, the FCC anticipates the auction and repacking process to occur in the fall of 2015.<sup>31</sup> The FCC’s latest update now anticipates starting the auction in early 2016.<sup>32</sup>

The bottom line is that with a shifting deadline for the auction and a repacking process that will be wrought with delays, the Commission should postpone indefinitely the LPTV digital conversion deadline. The Commission should not consider a new transition date until the incentive auction concludes and the full effects of the incentive auction on LPTV stations are understood.

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<sup>28</sup> *Id.*

<sup>29</sup> *See, e.g., Implementation of the DTV Delay Act*, 24 FCC Rcd 1607 (2009) (postponing the DTV transition date from February 17, 2009 to June 12, 2009).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Gary Epstein, *Incentive Auction Progress Report*, FCC.gov (Oct. 24, 2014), available at <http://www.fcc.gov/blog/incentive-auction-progress-report>.

**VII. CONCLUSION.**

The FCC should allow LPTV stations on digital TV channel 6 to operate analog FM radio services on an ancillary or supplementary basis. These FM radio services would promote efficient spectrum use, provide niche programming to underserved populations, and serve the public interest. In addition, the FCC should postpone indefinitely the LPTV digital transition until after the incentive auction completes.

Respectfully submitted,

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